

DEPOSITORY INSTITUTION MONEY LAUNDERING AMENDMENTS OF 1990

HEARING

BEFORE THE

COMMITTEE ON

BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2327

TO AUTHORIZE FEDERAL DEPOSITORY INSTITUTION REGULATORY AGENCIES TO REVOKE CHARTERS, TERMINATE DEPOSIT INSURANCE, AND REMOVE OR SUSPEND OFFICERS AND DIRECTORS OF DEPOSITORY INSTITUTIONS INVOLVED IN MONEY LAUNDERING OR MONETARY TRANSACTION REPORTING OFFENSES

S. 2651

TO AMEND CHAPTER 53 OF TITLE 31, UNITED STATES CODE, TO REQUIRE THE DEPARTMENT OF THE TREASURY TO ISSUE REGULATIONS CONCERNING THE IDENTIFICATION OF NON-BANK FINANCIAL INSTITUTIONS SUBJECT TO THE BANK SECRECY ACT, TO PROHIBIT ILLEGAL MONEY TRANSMITTING BUSINESSES, AND FOR OTHER PURPOSES

H.R. 3848

TO REQUIRE FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES TO TAKE ADDITIONAL ENFORCEMENT ACTIONS AGAINST DEPOSITORY INSTITUTIONS ENGAGING IN MONEY LAUNDERING, AND FOR OTHER PURPOSES

MAY 18, 1990

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DEPOSITORY INSTITUTION MONEY LAUNDERING AMENDMENTS OF 1990

FRIDAY, MAY 18, 1990

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:00 a.m., in room SD-538, Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (chairman of the committee) presiding.

Senators present: Riegle, D'Amato, Dixon, Kerry, and Heinz.

OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. The committee will come to order. Let me welcome all those in attendance this morning.

The committee will hear testimony today on specific legislative proposals to improve money laundering enforcement. Over the past few years, Congress has made it increasingly difficult for drug lords to launder their profits here in the United States. The majority of depository institutions in this country have cooperated fully with this effort.

Nevertheless, at Banking Committee hearings last fall, we heard testimony that there are still some bad apples and that money launderers increasingly are utilizing nondepository entities.

We have to take every step that we can to keep the pressure on the drug dealers and to put a stop to money laundering. The Treasury Department estimates that gross drug revenues are \$300 billion worldwide, and of that amount, \$110 billion is accounted for here in the United States—an incredible sum of money.

The bulk of this money is in small bills. The sheer volume of cash that must be laundered makes the entry point into the financial system the most vulnerable. We need to ensure that every possible step is taken to close these entry points so the drug money is not able to make its way into a laundering system and lose its identity.

Last fall the Banking committee held two oversight hearings in which we examined a number of enforcement issues in depth. Senator Kerry of Massachusetts and Senator Graham of Florida chaired those hearings before this committee's Subcommittee on Consumer and Regulatory Affairs.

In February of this year, Senator Kerry issued a report based on hearings before this committee, as well as the Foreign Relations Committee. I joined Senator Kerry along with my colleagues Sena-

tors Metzenbaum, Garn, Bond, Bryan, and Hatch in introducing legislation based on several of Senator Kerry's recommendations.

That bill, S. 2327, would significantly strengthen the penalties for money laundering. The bill would permit the regulators of depository institutions in appropriate cases to revoke a charter, to terminate deposit insurance, and remove employees convicted of money laundering offenses.

Bank management and employees would be deterred from facilitating money laundering in their institutions because they would face enormous the risk of losing their jobs. I very much want to commend Senator Kerry for his important continuing leadership on this vital issue.

We also will consider a bill introduced yesterday, S. 2651, by Senator D'Amato, who has also been a leader in the effort to try to crack down on drug abuse in this country. My colleague's bill addresses several of the problems raised in our hearings last fall.

So I will at a later time introduce our witnesses this morning, but prior to doing so, let me yield to Senator D'Amato for an opening comment.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, I would like to commend you for your efforts and those of Senator Kerry on the issue of money laundering. I am pleased to be co-sponsoring S. 2327 with you and Senator Kerry. I also want to thank you for adding S. 2651, the Money Laundering Enforcements Act, which I have introduced along with Senators Dodd, Wilson, DeConcini, Dole, and Coats, to the agenda on today's hearing.

Our bill, if I might be permitted very briefly to outline some of the major aspects, seeks to identify companies that are really nothing more than fronts for laundering of drug money. It is about time we stopped the money launderers and took the drug lords to the cleaners, and that is what this bill I believe will go a long way towards doing.

As an example, the so-called money transmitters fronting as travel agencies whose real business is the laundering of millions of dollars of drugs.

It authorizes the Treasury Department to issue expanded "know your customer" rules for banks and other financial institutions to combat money laundering. The day when banks can just sign up new customers and wire their money wherever they are told should be over.

Our bill has two main targets: international wire transfers, and the largely unregulated financial institutions. As the director of the special investigations for the New York State banking department testified before this committee last November:

As banks became more sophisticated in reporting currency transactions, drug dealers became more creative and began to rely increasingly on unlicensed and illegal money transmitters, on check cashers, and on money order vendors, all users and sources of huge amounts of cash. It is primarily the unlicensed money transmitter who provides the best means of laundering money and is most often used to structure illegal transactions.

On November 15 of last year, we had the Assistant Treasury Secretary of Enforcement testify that investigations by law enforce-

ment authorities show that wire transfers increasingly are becoming the method of choice to launder money.

On April 28 of last year, in a submission to the drug czar, the American Bankers stated:

Wire transfers which are essentially unregulated have emerged as the primary method by which high volume launderers ply their trade.

A September 25, 1989, article in the New York Times entitled "Unassuming Storefronts Believed to Launder Drug Dealers' Profits" quotes State banking regulators as saying that storefront money transmitting and check cashing operations are sending billions of dollars to drug dealers in South America and Asia.

Unfortunately, as the House Banking Committee noted in its Report No. 101-446 on Money Laundering:

Certain States have recognized a need for more effective regulation of these businesses, but most States have yet to act. Those who have required some form of licensure usually have little manpower available to properly supervise and monitor their activities.

Mr. Chairman, that is why I believe the Money Laundering Enforcement Act is so essential. It helps fill that gap which now makes it possible for billions of drug dollars to be laundered and which now makes it possible for the drug lords to continue their operations. We have an opportunity to put a stop to that.

May I at this point commend Senator Kerry for his hard-hitting legislation which is absolutely necessary. There are those who will decry it, as they have in past efforts, but I commend the Senator and look forward to not only supporting this, but seeing this vital legislation enacted into law.

Thank you, Mr. Chairman.

[Press release of Senator D'Amato follows:]

U.S. Senator Al D'Amato

of New York

FOR IMMEDIATE RELEASE
Friday, May 18, 1990

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Statement by Senator Alfonse D'Amato
Senate Committee on Banking, Housing and Urban Affairs Hearing on
Money Laundering Legislation
May 18, 1990

Mr. Chairman, I commend you for your efforts to focus attention on the issue of money laundering, and am pleased to be a cosponsor of S.2327, which you and Senator Kerry have introduced. I also want to thank you for adding The Money Laundering Enforcement Act, which I have introduced with Senators Dodd, Wilson, DeConcini, Dole and Coats, to the agenda of this hearing.

Our bill: (1) seeks to identify the companies that are really nothing more than fronts for the laundering of drug money. An example is the so-called "money transmitter" -- fronting as a travel agency -- whose real business is the laundering of millions of dollars of drug money;

(2) it authorizes the Treasury Department to issue expanded "know your customer" rules for banks and other financial institutions to combat money laundering. The day when banks can just sign up new customers and wire their money wherever they're told -- with no questions asked -- is over.

Our bill has two main targets:

- international wire transfers; and
- the largely unregulated financial institutions.

As the Director of Special Investigations for the New York State Banking Department testified before this Committee last November: "As banks became more sophisticated in reporting currency transactions, drug dealers became more creative and began to rely increasingly on unlicensed and illegal money transmitters, on check cashers, and on money order vendors, all users and sources of huge amounts of cash... It is primarily the unlicensed money transmitter who provides the best means of laundering money and is most often used to structure illegal transactions."

On November 15, 1989, then-Assistant Treasury Secretary for Enforcement Salvatore R. Martoche testified before the House Banking Committee: "Investigations by law enforcement authorities show that wire transfers increasingly are becoming the method of choice to launder money."

In an April 28, 1989 submission to the Drug Czar, the American Bankers Association stated: "Wire transfers, which are essentially unregulated, have emerged as the primary method by which high volume launderers ply their trade."

A September 25, 1989 article in the New York Times, entitled, "Unassuming Storefronts Believed to Launder Drug Dealers' Profits" quotes state banking regulators as saying that storefront money-transmitting and check-cashing operations are sending billions of dollars to drug dealers in South America and Asia.

Unfortunately, as the House Banking Committee noted in its Report (Number 101-446) on its money laundering bill: "Certain states have recognized a need for more effective regulation of these businesses, but most states have yet to act."

"Those who have required some form of licensure usually have little manpower available to properly supervise and monitor the activities of these business establishments."

The Money Laundering Enforcement Act does not solve these problems completely, but it does very significantly increase the federal role in working with the states to combat money laundering.

Among the bill's key provisions are: Section 2, drafted with the technical assistance of the Treasury Department, provides for the identification of non-bank financial institutions. Instead of requiring money transmitters to register with Treasury, as the original draft of my bill provided, the bill as introduced requires Treasury to issue regulations by July 1, 1991 requiring that depository institutions -- banks, saving associations, and credit unions-- identify their non-bank financial institution customers -- money transmitters, check cashers, foreign exchange dealers, issuers and redeemers of traveller's checks, and casinos.

To help state regulators, the bill provides that Treasury will provide the list to state supervisory agencies for supervisory purposes, because, as Mr. Mahoney testified before the Banking Committee: "It is the sharing of information that is crucial in the battle against drug dealing and money laundering."

Section 3 makes it a federal crime to operate a money transmitting business in violation of state law. Section 4 is included at Treasury's request. It authorizes Treasury to issue rules requiring financial institutions to have stronger "know your customer" procedures. The Treasury Department already has authority to impose special reporting rules on financial institutions in certain geographic areas -- for example, they can be required to report cash transactions of less than \$10,000.

But if the banks tell their customers these rules are in effect, it defeats the whole purpose. Section 5, therefore, prohibits financial institutions from telling customers they are subject to geographic targeting. Section 6 relates to Record keeping for International Fund Transfers. This section is similar to a provision in the House money laundering bill (H.R. 3848).

But where the House bill only requires record keeping regulations for domestic depository institutions making international fund transfers, our bill also requires Treasury to issue record keeping rules for international fund transfer orders made by money transmitters and check cashers.

Section 7 is another Treasury request. These amendments are necessary to continue expired and expiring provisions already in effect. The first permits Federal law enforcement agencies to continue to receive information reported to the Internal Revenue Service by companies -- such as car and boat dealers -- making cash sales involving more than \$10,000. The second reestablishes the authority of IRS to use the income generated from an undercover business operation to pay the expenses of the undercover business.

Section 8 contains yet another Treasury request, amendments to the Right to Financial Privacy Act (RPPA), to: 1) Permit financial records obtained by an agency in accordance with the RPPA to be transferred to another agency without notice to the customer if there is reason to believe that the records are appropriate for analysis for law enforcement purposes; and 2) Make it clear the RPPA would not apply to a financial institution providing information that may be relevant to a Bank Secrecy Act violation by a customer.

Mr. Chairman, I look forward to working with you and the other members of this Committee on both S. 2327 and the Money Laundering Enforcement Act, and to hearing from today's witnesses. Thank you.

The CHAIRMAN. Thank you, Senator D'Amato.
Senator Dixon?

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON. Mr. Chairman, I am pleased to be here this morning as the Senate Banking Committee considers three legislative proposals on preventing and prosecuting money laundering. I look forward to the testimony of the witnesses so that I may evaluate whether all the details of these bills are properly crafted.

I am fully in support of the main ideas embodied in these bills. We as a country must be serious about stopping money laundering. There must be, therefore, serious penalties for institutions which knowingly engage in this practice or facilitate it.

We heard at the last hearing on this subject in the subcommittee I chair, that many banks are cooperating with efforts to identify money launderers and to prevent this crime. I applaud those voluntary efforts, Mr. Chairman. Yet, the regulatory agencies should also carry a big stick when penalties for money laundering are to be imposed.

We also heard at the last hearing that money laundering often occurs by unlicensed money transmitters and others outside the banking system. Senator Al D'Amato has proposed some very useful ideas to help catch money laundering that occurs outside of our financial institutions, and I applaud his usual thoughtfulness.

I want to be sure that our efforts to stop money laundering are both tough and cost-effective. We need to keep drugs out of our schools, crooks out of our banks and thrifts, and illegal profits away from legitimate businesses. I am strongly in favor of legislation which will help accomplish these goals, and I congratulate you on holding this hearing.

The CHAIRMAN. Thank you, Senator Dixon.
Senator Heinz?

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Mr. Chairman, first of all I want to indicate that I will have to absent myself in a few minutes to go back up to a hearing which I am co-chairing with Senator Pryor on Social Security Administration, but I did want to come by at this point to commend you in holding this hearing, to commend the sponsors of two of the three bills before us—Senator Kerry and Senator D'Amato—for their excellent leadership in this area, and to note that drugs are often referred to as a "cash crop" for good reason.

Where there are drugs, there is money. We cannot begin to stem the flow of drugs until we stem the flow of money. Unlike drugs that travel across our borders in boats and planes in the dark of night, money travels from country to country through electronic payment systems during banker's hours. We know that finding drugs cleverly disguised by smugglers is hard, but finding drug money—that is, illegal profits that look no different from the hard-earned bucks—is much harder.

It cannot be done without the cooperation of those who control the money highways, the banks and the world community. The legislation this committee examines today seeks to improve the means

used to detect and report the flow of drug money. By enhancing our ability to follow the flow of money, we will ultimately be able to trace the flow of drugs.

So, Mr. Chairman, I look forward to the views of today's witnesses on this important legislation. If drug launderers can—drug traffickers can no longer wash their money, it will not be long, I trust, before they are all washed up. And I hope to return, Mr. Chairman, for opportunities to question the witnesses.

The CHAIRMAN. Very good. Thank you, Senator Heinz.

Before calling on Senator Kerry, I want to say, Senator Kerry, that I think you have given the most important leadership in the Senate on this issue both in the Foreign Relations Committee, as well as in this committee. This is a critical issue, and I want to commend you for that leadership effort. You really have been the spearhead on money laundering enforcement this, and the committee is grateful. We will be pleased to hear any comments you wish to make at this time.

OPENING STATEMENT OF SENATOR KERRY

Senator KERRY. Mr. Chairman, thank you, very much. I appreciate that opportunity, and I particularly appreciate your comments. Thank you very much for them, and my other colleagues, I thank them.

I also want to thank you, Mr. Chairman, for your personal response to this. When I came to you and asked you if we could have a hearing and suggested that this was an area of increasing concern, your response was immediate and affirmative, and you have been more than helpful in crafting this particular piece of legislation and in helping us to get a bipartisan approach to it, which I think is very important, and I thank Senator D'Amato who has been a colleague in this effort now for a number of years since we sat on the hearings about General Noriega and first learned about the degree to which the banking structure had become wittingly and unwittingly in many cases complicitous in the drug trade itself.

I think Senator D'Amato and I were both shocked when we learned the degree to which there was just sort of a banking relationship between drug traffickers, cartel folks, and these significant kingpins of the trade. That prompted us, obviously, to look even further. But I want to thank Senator Metzenbaum, who is not here right now—I do not know if he is going to be—but his efforts have also been important in drafting this legislation, and I am grateful to Senator Garn, Senator Hatch, Senator Bond, and Senator Bryan for all joining in this effort.

I would just like to take a moment—we want to hear from the witnesses—but I do want the record to make very clear where we are coming from and why this is important.

Last February of this year the Subcommittee on Narcotics and Terrorism, which I chair, submitted a report to the Foreign Relations Committee entitled "Drug Money Laundering: Banks and Foreign Policy."

In that report, the subcommittee pointed out the degree to which some of our banking policies and foreign policy decisions had in

fact facilitated the flow of narcotics' money—and not just narcotics' money, but other illicit money—and that there are some enormous anomalies in our banking system in that, while American banks onshore are held to the standard of providing currency transaction reports for \$10,000 and up cash transactions, those same banks have only to move offshore to get out from under that requirement. And branches of a similar bank could in effect be wire transferring and accepting large deposits of cash without being subject to those reporting requirements, and then wire them back into this country to find that they have in effect laundered almost as effectively as previously, the biggest single problem being getting the cash out of this country.

As the Chairman has said, it is a \$100 billion approximately in this country. We are interdicting somewhere between 10 and 20 percent of the drugs that come into this country because we have made strong interdiction efforts. If one were to just interdict 10 to 20 percent of the cash that is moved in similar fashion, we could have anywhere from \$10 to \$20 billion available to fund the drug war, not to mention other priorities.

So we are not talking about small sums of money, or a small loophole, obviously. In the report that we submitted, Mr. Chairman, the subcommittee recommended that Federal regulators should consider the revocation of a bank's charter whenever there is evidence that a bank's senior officials and directors had knowledge of or participated knowingly in money laundering to the extent that the operational integrity and the viability of that particular institution is compromised.

Now this seems to be pretty straightforward, and even fundamental. If a bank undertakes, knowingly as a matter of corporate policy, to engage in money laundering and goes out and solicits that kind of money in order to make money, they ought to be held accountable for that, and the banks should not be permitted to function in this country. That is a very simple principle.

The recommendation was based on the money laundering case involving the Bank of Credit and Commerce International, BCCI, in Tampa. BCCI was indicted in October 1988, and it negotiated a plea bargain in January of this year. At that time, I felt that the plea bargain was inappropriate, and I joined with Senator Metzenbaum and others in writing the Attorney General for an explanation of the plea bargain.

I later joined Senator Metzenbaum and others in a letter to the Judge in the case asking that he reassess the appropriateness of a simple forfeiture and that he ascertain whether or not the Government should have waived its right to further prosecute that bank in the Middle District of Florida.

Since the disposition of that case, new facts have come to light which have confirmed my view that there needs to be a much deeper investigation into the operations and practices of this particular bank, and I am continuing, to whatever extent possible, to pursue an inquiry into BCCI.

Interestingly, while the BCCI case was the impetus for the legislation before us, this legislation does not in fact cover BCCI because BCCI had an agency status, and therefore was chartered by the State of Florida, but by no department or institution of the

Federal Government. So in my view that raises a separate set of questions about how we regulate banks in this country.

It also raises the question of whether or not we need to have some kind of Federal registration for all foreign financial institutions that propose to do business in this country in order to determine whether or not they are meeting the standards that this country wants to set for the flow of currency.

Mr. Chairman, the vast majority of banks in this country are law-abiding, and the vast majority of banks in this country are working to cooperate with law enforcement in anti-money laundering efforts. The legislation this is the subject of this hearing today is not directed at those banks, or at the individuals in those banks.

But the fact remains that this \$100 billion industry continues to be part of the fabric or mosaic that is destroying whole communities in this country, and someone is facilitating the laundering of those funds.

I commend Senator D'Amato for his efforts and want to join as a cosponsor of his efforts. The second panel today will discuss a whole second arena of transactions which has been made somewhat attractive by virtue of the focus on money laundering itself.

Now we have check cashers, and wire transmitters, and a whole lot of cardboard cutout front operations, and it is going to be interesting to see to what degree those kinds of operations, unregulated as they are without any recordation or accountability process and have become the new outlet for money laundering.

The bill before us, Mr. Chairman, I believe gives us a minimal structure of accountability that we have a right to require, and that the regulatory agencies would be given an important tool to permit them to enhance the accountability in this system. I do not think that it is intrusive. I think it is, however, a very important deterrent, and an additional actual investigative tool which will provide us with an ability to be able to try to stem this extraordinary tide.

It is clear—and Senator D'Amato knows this from his efforts in crafting the drug bill of 1988 which we were all part of—that unless we are fighting this on a whole set of fronts, each loophole becomes its own way of facilitating the process, and we have to plug each of those loopholes up. I think today's effort is important in doing that.

So I thank you very much, Mr. Chairman, for your efforts.

[Copies of proposed bills S. 2327, S. 2651, and H.R. 3848 follow:]

101ST CONGRESS
2D SESSION

S. 2327

To authorize Federal depository institution regulatory agencies to revoke charters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or monetary transaction reporting offenses.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, JANUARY 23), 1990

Mr. KERRY (for himself, Mr. RIEGLE, Mr. METZENBAUM, Mr. GARN, Mr. BOND, Mr. BRYAN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To authorize Federal depository institution regulatory agencies to revoke charters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or monetary transaction reporting offenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Depository Institution
5 Money Laundering Amendments of 1990".

1 SEC. 2. REVOCATION OF CHARTER OF FEDERAL DEPOSITORY
2 INSTITUTIONS CONVICTED OF MONEY LAUN-
3 DERING OR CASH TRANSACTION REPORTING
4 OFFENSES.

5 (a) NATIONAL BANKS.—Section 5239 of the Revised
6 Statutes (12 U.S.C. 93) is amended by adding at the end the
7 following:

8 “(c) FORFEITURE OF FRANCHISE FOR MONEY LAUN-
9 DERING OR CASH TRANSACTION REPORTING OFFENSES.—

10 “(1) IN GENERAL.—(A) If a national bank is con-
11 victed of any offense described in section 1956(a) or
12 1957 of title 18, United States Code, the Comptroller
13 of the Currency shall issue a notice of his or her inten-
14 tion to terminate all rights, privileges, and franchises of
15 such bank and schedule a pretermination hearing.

16 “(B) If a national bank is convicted of any offense
17 described in section 5322 of title 31, United States
18 Code, the Comptroller of the Currency may issue a
19 notice of his or her intention to terminate all rights,
20 privileges, and franchises of such bank and schedule a
21 pretermination hearing.

22 “(2) FACTORS TO CONSIDER BEFORE A FORFEIT-
23 URE IS ISSUED.—In determining whether a franchise
24 shall be forfeited under paragraph (1), the Comptroller
25 shall consider—

1 “(A) the degree to which senior management
2 officials knew of, or were involved in, the solici-
3 tation of narcotics derived funds or the money laun-
4 dering operation;

5 “(B) whether the interest of the local com-
6 munity in adequate depository and credit services
7 would be threatened by the forfeiture of the
8 franchise;

9 “(C) whether the bank has fully cooperated
10 with law enforcement authorities with respect to
11 the conviction; and

12 “(D) whether there will be significant losses
13 to the Federal deposit insurance funds or the Res-
14 olution Trust Corporation.

15 “(3) SUCCESSOR LIABILITY:—This subsection
16 does not apply to a successor to the interests of, or a
17 person who acquires, a bank that violated a provision
18 of law described in paragraph (1), if the successor suc-
19 ceeds to the interests of the violator, or the acquisition
20 is made, in good faith and not for purposes of evading
21 this subsection or regulations prescribed under this sub-
22 section.

23 “(4) DEFINITION.—For purposes of this subsec-
24 tion, the term ‘senior management officials’ means
25 those individuals who exercise major supervisory con-

1 trol within a national bank, including members of the
2 board of directors and individuals who own or control
3 10 percent or more of the outstanding stock of such
4 bank or its holding company. If the institution is a
5 Federal branch of a foreign institution, the term 'senior
6 management officials' means those individuals who ex-
7 ercise major supervisory control within any branch of
8 that foreign institution located within the United
9 States. The Comptroller shall by regulation specify
10 which officials of a national bank shall be treated as
11 senior management officials for the purpose of this sub-
12 section."

13 (b) FEDERAL SAVINGS ASSOCIATIONS.—Section 5 of
14 the Home Owners' Loan Act (12 U.S.C. 1464) is amended
15 by adding at the end the following:

16 "(w) FORFEITURE OF CHARTER FOR MONEY LAUN-
17 DERING OR CASH TRANSACTION REPORTING OFFENSES.—

18 "(1) IN GENERAL.—(A) If a Federal savings asso-
19 ciation is convicted of any offense described in section
20 1956(a) or 1957 of title 18, United States Code, the
21 Director shall issue a notice of his or her intention
22 to terminate all rights, privileges, and franchises of
23 such savings association and schedule a pretermination
24 hearing.

1 “(B) If a Federal savings association is convicted
2 of any offense described in section 5322 of title 31,
3 United States Code, the Director may issue a notice of
4 his or her intention to terminate all rights, privileges,
5 and franchises of such savings association and schedule
6 a pretermination hearing.

7 “(2) FACTORS TO BE CONSIDERED.—In deter-
8 mining whether a franchise shall be forfeited under
9 paragraph (1), the Director shall consider—

10 “(A) the degree to which senior management
11 officials knew of, or were involved in, the solici-
12 tation of narcotics derived funds or the money laun-
13 dering operation;

14 “(B) whether the interest of the local com-
15 munity in adequate depository and credit services
16 would be threatened by the forfeiture of the
17 franchise;

18 “(C) whether the institution has fully cooper-
19 ated with law enforcement authorities with re-
20 spect to the conviction; and

21 “(D) whether there will be significant losses
22 to the Federal deposit insurance funds or the Res-
23 olution Trust Corporation.

24 “(3) SUCCESSOR LIABILITY.—This subsection
25 does not apply to a successor to the interests of, or a

1 person who acquires, a savings association that violat-
2 ed a provision of law described in paragraph (1), if the
3 successor succeeds to the interests of the violator, or
4 the acquisition is made, in good faith and not for pur-
5 poses of evading this subsection or regulations pre-
6 scribed under this subsection.

7 “(4) DEFINITION.—For purposes of this subsec-
8 tion, the term ‘senior management officials’ means
9 those individuals who exercise major supervisory con-
10 trol within a savings association, including members of
11 the board of directors and individuals who own or con-
12 trol 10 percent or more of the outstanding stock of
13 such savings association or its holding company. If the
14 savings association is a United States branch of a for-
15 eign institution, the term ‘senior management officials’
16 means those individuals who exercise major superviso-
17 ry control within any branch of that foreign institution
18 located within the United States. The Director shall by
19 regulation specify which officials of a savings associa-
20 tion shall be treated as senior management officials for
21 the purpose of this subsection.”.

22 (c) FEDERAL CREDIT UNIONS.—Title I of the Federal
23 Credit Union Act (12 U.S.C. 1752 et seq.) is amended by
24 adding at the end the following new section:

1 "SEC. 128. FORFEITURE OF ORGANIZATION CERTIFICATE FOR
2 MONEY LAUNDERING OR CASH TRANSACTION
3 REPORTING OFFENSES.

4 "(a) FORFEITURE OF FRANCHISE FOR MONEY LAUN-
5 DERING OR CASH TRANSACTION REPORTING OFFENSES.—
6 (1) If a credit union is convicted of any offense described in
7 section 1956(a) or 1957 of title 18, United States Code, the
8 Board shall issue a notice of its intention to terminate all
9 rights, privileges, and franchises of such credit union and
10 schedule a pretermination hearing.

11 "(2) If a credit union is convicted of any offense de-
12 scribed in section 5322 of title 31, United States Code, the
13 Board may issue a notice of its intention to terminate all
14 rights, privileges, and franchises of such credit union and
15 schedule a pretermination hearing.

16 "(b) FACTORS TO CONSIDER BEFORE A FORFEITURE
17 IS ISSUED.—In determining whether a franchise shall be for-
18 feited under subsection (a), the Board shall consider—

19 "(1) the degree to which senior management offi-
20 cials knew of, or were involved in, the solicitation
21 of narcotics derived funds or the money laundering
22 operation;

23 "(2) whether the interest of the local community
24 in adequate depository and credit services would be
25 threatened by the forfeiture of the franchise;

1 “(3) whether the institution has fully cooperated
2 with law enforcement authorities with respect to the
3 conviction; and

4 “(4) whether there will be significant losses to the
5 credit union share insurance fund.

6 “(c) SUCCESSOR LIABILITY.—This section does not
7 apply to a successor to the interests of, or a person who
8 acquires, a credit union that violated a provision of law de-
9 scribed in subsection (a), if the successor succeeds to the in-
10 terests of the violator, or the acquisition is made, in good
11 faith and not for purposes of evading this section or regula-
12 tions prescribed under this section.

13 “(d) DEFINITION.—For purposes of this section, the
14 term ‘senior management officials’ means those individuals
15 who exercise major supervisory control within a credit union,
16 including members of the board of directors and individuals
17 who own or control 10 percent or more of the outstanding
18 stock of such credit union. If the credit union is a United
19 States branch of a foreign institution, the term ‘senior man-
20 agement officials’ means those individuals who exercise major
21 supervisory control within any branch of that foreign institu-
22 tion located within the United States. The Board shall by
23 regulation specify which officials of a credit union shall be
24 treated as senior management officials for the purpose of this
25 section.”.

1 SEC. 3. TERMINATION OF INSURANCE OF STATE DEPOSITORY
2 INSTITUTIONS CONVICTED OF MONEY LAUN-
3 DERING OR CASH TRANSACTION REPORTING
4 OFFENSES.

5 (a) STATE BANKS AND SAVINGS ASSOCIATIONS.—
6 Section 8 of the Federal Deposit Insurance Act (12 U.S.C.
7 1818) is amended by adding at the end the following new
8 subsection:

9 “(v) TERMINATION OF INSURANCE FOR MONEY LAUN-
10 DERING OR CASH TRANSACTION REPORTING OFFENSES.—

11 “(1) IN GENERAL.—(A) If an insured State de-
12 pository institution, including a State branch of a for-
13 eign institution, is convicted of any offense described in
14 section 1956(a) or 1957 of title 18, United States
15 Code, the Board of Directors shall issue a notice of its
16 intention to terminate the insured status of the insured
17 depository institution and schedule a pretermination
18 hearing.

19 “(B) If an insured State depository institution, in-
20 cluding a State branch of a foreign institution, is con-
21 victed of any offense described in section 5322 of title
22 31, United States Code, the Board of Directors may
23 issue a notice of its intention to terminate the insured
24 status of the insured depository institution and schedule
25 a pretermination hearing.

1 “(2) FACTORS TO BE CONSIDERED.—In deter-
2 mining whether to terminate insurance under para-
3 graph (1), the Board of Directors shall consider—

4 “(A) the degree to which senior management
5 officials knew of, or were involved in, the solicita-
6 tion of narcotics derived funds or the money laun-
7 dering operation;

8 “(B) whether the interest of the local com-
9 munity in adequate depository and credit services
10 would be threatened by the forfeiture of the
11 franchise;

12 “(C) whether the institution has fully cooper-
13 ated with law enforcement authorities with re-
14 spect to the conviction; and

15 “(D) whether there will be significant losses
16 to the Federal deposit insurance funds or the Res-
17 olution Trust Corporation.

18 “(3) NOTICE TO STATE BANKING SUPERVISOR
19 AND PUBLIC.—The Board of Directors shall—

20 “(A) notify the State banking supervisor of
21 any State depository institution described in para-
22 graph (1) 10 days prior to the termination of the
23 insured status of such depository institution, in-
24 cluding a State branch of a foreign bank; and

1 “(B) publish notice of the termination of the
2 insured status of the depository institution.

3 “(4) DEPOSITS UNINSURED.—Upon termination
4 of the insured status of any State depository institution
5 pursuant to paragraph (1), the deposits of such deposi-
6 tory institution shall be treated in accordance with
7 section 8(a)(7).

8 “(5) SUCCESSOR LIABILITY.—This subsection
9 does not apply to a successor to the interests of, or a
10 person who acquires, an insured depository institution
11 that violated a provision of law described in paragraph
12 (1), if the successor succeeds to the interests of the vio-
13 lator, or the acquisition is made, in good faith and not
14 for purposes of evading this subsection or regulations
15 prescribed under this subsection.

16 “(6) DEFINITION.—For purposes of this subsec-
17 tion, the term ‘senior management officials’ means
18 those individuals who exercise major supervisory con-
19 trol within an insured depository institution, including
20 members of the board of directors and individuals who
21 own or control 10 percent or more of the outstanding
22 stock of such institution or its holding company. If the
23 institution is a State branch of a foreign institution, the
24 term ‘senior management officials’ means those individ-
25 uals who exercise major supervisory control within any

1 branch of that foreign institution located within the
2 United States. The Board of Directors shall by regula-
3 tion specify which officials of an insured State deposi-
4 tory institution shall be treated as senior management
5 officials for the purpose of this subsection.”.

6 (b) STATE CREDIT UNIONS.—Section 206 of the Fed-
7 eral Credit Union Act (12 U.S.C. 1786) is amended by
8 adding at the end the following new subsection:

9 “(c) TERMINATION OF INSURANCE FOR MONEY LAUN-
10 DERING OR CASH TRANSACTION REPORTING OFFENSES.—

11 “(1) IN GENERAL.—(A) If a credit union is con-
12 victed of any offense described in section 1956(a) or
13 1957 of title 18, United States Code, the Board shall
14 issue a notice of its intention to terminate the insured
15 status of that credit union and schedule a pretermina-
16 tion hearing.

17 “(B) If a credit union is convicted of any offense
18 described in section 5322 of title 31, United States
19 Code, the Board may issue a notice of its intention to
20 terminate the insured status of that credit union and
21 schedule a pretermination hearing.

22 “(2) FACTORS TO BE CONSIDERED.—In deter-
23 mining whether to terminate insurance under para-
24 graph (1), the Board shall consider—

1 “(A) the degree to which senior management
2 officials knew of, or were involved in, the sollicita-
3 tion of narcotics derived funds or the money laun-
4 dering operation;

5 “(B) whether the interest of the local com-
6 munity in adequate depository and credit services
7 would be threatened by the forfeiture of the
8 franchise;

9 “(C) whether the institution has fully cooper-
10 ated with law enforcement authorities with re-
11 spect to the conviction; and

12 “(D) whether there will be significant losses
13 to the credit union share insurance fund.

14 “(3) NOTICE TO STATE CREDIT UNION SUPERVI-
15 SOR AND PUBLIC.—The Board shall—

16 “(A) notify the commission, board, or author-
17 ity (if any) having supervision of the credit union
18 described in paragraph (1) 10 days prior to the
19 termination of the insured status of such credit
20 union; and

21 “(B) publish notice of the termination of the
22 insured status of the credit union.

23 “(4) DEPOSITS UNINSURED.—Upon termination
24 of the insured status of any State credit union pursuant

1 to paragraph (1), the deposits of such credit union shall
2 be treated in accordance with section 206(d)(2).

3 “(5) SUCCESSOR LIABILITY.—This subsection
4 does not apply to a successor to the interests of, or a
5 person who acquires, an insured credit union that vio-
6 lated a provision of law described in paragraph (1), if
7 the successor succeeds to the interests of the violator,
8 or the acquisition is made, in good faith and not for
9 purposes of evading this subsection or regulations pre-
10 scribed under this subsection.

11 “(7) DEFINITION.—For purposes of this subsec-
12 tion, the term ‘senior management officials’ means
13 those individuals who exercise major supervisory con-
14 trol within an insured credit union, including members
15 of the board of directors and individuals who own or
16 control 10 percent or more of the outstanding stock of
17 such credit union. If the credit union is a United States
18 branch of a foreign institution, the term ‘senior man-
19 agement officials’ means those individuals who exercise
20 major supervisory control within any branch of that
21 foreign institution located within the United States.
22 The Board shall by regulation specify which officials
23 of an insured State credit union shall be treated as
24 senior management officials for the purpose of this
25 subsection.”.

1 SEC. 4. REMOVAL OF PARTIES INVOLVED IN CURRENCY RE-
2 PORTING VIOLATIONS.

3 (a) FDIC INSURED INSTITUTIONS.—

4 (1) VIOLATION OF REPORTING REQUIRE-
5 MENTS.—Section 8(e)(2) of the Federal Deposit Insur-
6 ance Act (12 U.S.C. 1818(e)(2)) is amended to read as
7 follows:

8 “(2) SPECIFIC VIOLATIONS.—Whenever the ap-
9 propriate Federal banking agency determines that—

10 “(A) an institution affiliated party committed
11 a violation of any provision of subchapter II of
12 chapter 53 of title 31, United States Code, unless
13 such violation was inadvertent or unintentional;

14 “(B) an officer or director of an insured de-
15 pository institution knew that an institution affili-
16 ated party of the insured depository institution
17 violated any such provision or any provision of
18 law referred to in subsection (g)(1)(A)(ii); or

19 “(C) an officer or director of an insured de-
20 pository institution committed any violation of the
21 Depository Institution Management Interlocks
22 Act,

23 the agency may serve upon such party, officer, or di-
24 rector a written notice of its intention to remove him
25 from office. In determining whether an officer or direc-
26 tor should be removed as a result of the application of

1 subparagraph (B), the agency shall consider whether
2 the officer or director took appropriate action to stop,
3 or to prevent the recurrence of, a violation described in
4 such subparagraph.”.

5 (2) **FELONY CHARGES.**—Section 8(g)(1) of the
6 Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1))
7 is amended to read as follows:

8 “(1)(A) Whenever any institution-affiliated party
9 is charged in any information, indictment, or complaint,
10 with the commission of or participation in—

11 “(i) a crime involving dishonesty or breach of
12 trust which is punishable by imprisonment for a
13 term exceeding one year under State or Federal
14 law, or

15 “(ii) a violation of section 1956(a) or 1957 of
16 title 18, United States Code, or section 5322 of
17 title 31, United States Code,

18 the appropriate Federal banking agency may, if contin-
19 ued service or participation by such party may pose a
20 threat to the interests of the depository institution’s de-
21 positors or may threaten to impair public confidence in
22 the depository institution, by written notice served
23 upon such party, suspend such party from office or pro-
24 hibit such party from further participation in any

1 manner in the conduct of the affairs of the depository
2 institution.

3 “(B) A copy of such notice shall also be served
4 upon the depository institution. Such suspension or
5 prohibition shall remain in effect until such information,
6 indictment, or complaint is finally disposed of or until
7 terminated by the agency.

8 “(C)(i) In the event that a judgment of conviction
9 or an agreement to enter a pretrial diversion or other
10 similar program is entered against such party in con-
11 nection with a crime described in subparagraph (A)(i),
12 and at such time as such judgment is not subject to
13 further appellate review, the agency may, if continued
14 service or participation by such party may pose a
15 threat to the interests of the depository institution’s de-
16 positors or may threaten to impair public confidence in
17 the depository institution, issue and serve upon such
18 party an order removing such party from office or pro-
19 hibiting such party from further participation in any
20 manner in the conduct of the affairs of the depository
21 institution except with the consent of the appropriate
22 agency.

23 “(ii) In the event of such a judgment of conviction
24 or agreement in connection with a violation described
25 in subparagraph (A)(ii), the agency shall issue and

1 serve upon such party an order removing such party
2 from office or prohibiting such party from further par-
3 ticipation in any manner in the conduct of the affairs of
4 the depository institution except with the consent of
5 the appropriate agency.

6 “(D) A copy of such order shall also be served
7 upon such depository institution, whereupon such party
8 (if a director or an officer) shall cease to be a director
9 or officer of such depository institution. A finding of
10 not guilty or other disposition of the charge shall not
11 preclude the agency from thereafter instituting pro-
12 ceedings to remove such party from office or to prohib-
13 it further participation in depository institution affairs,
14 pursuant to paragraph (1), (2), or (3) of subsection (e)
15 of this section. Any notice of suspension or order of re-
16 moval issued under this paragraph shall remain effec-
17 tive and outstanding until the completion of any hear-
18 ing or appeal authorized under paragraph (3) unless
19 terminated by the agency.”.

20 (b) CREDIT UNIONS.—

21 (1) VIOLATION OF REPORTING REQUIRE-
22 MENTS.—Section 206(g)(2) of the Federal Credit
23 Union Act (12 U.S.C. 1786(g)(2)) is amended to read
24 as follows:

1 “(2) **SPECIFIC VIOLATIONS.**—Whenever the
2 Board determines that—

3 “(A) an institution affiliated party committed
4 a violation of any provision of subchapter II of
5 chapter 53 of title 31, United States Code, unless
6 such violation was inadvertent or unintentional;

7 “(B) an officer or director of an insured
8 credit union knew that an institution affiliated
9 party of the insured credit union violated any such
10 provision or any provision of law referred to in
11 subsection (i)(1)(A)(ii); or

12 “(C) an officer or director of an insured
13 credit union committed any violation of the De-
14 pository Institution Management Interlocks Act,
15 the Board may serve upon such party, officer, or direc-
16 tor a written notice of its intention to remove him from
17 office. In determining whether an officer or director
18 should be removed as a result of the application of sub-
19 paragraph (B), the Board shall consider whether the
20 officer or director took appropriate action to stop, or to
21 prevent the recurrence of, a violation described in such
22 subparagraph.”.

23 (2) **FELONY CHARGES.**—Section 206(i)(1) of the
24 Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is
25 amended to read as follows:

1 “(1)(A) Whenever any institution-affiliated party
2 is charged in any information, indictment, or complaint,
3 with the commission of or participation in—

4 “(i) a crime involving dishonesty or breach of
5 trust which is punishable by imprisonment for a
6 term exceeding one year under State or Federal
7 law, or

8 “(ii) a violation of section 1956(a) or 1957 of
9 title 18, United States Code, or section 5322 of
10 title 31, United States Code,

11 the Board may, if continued service or participation by
12 such party may pose a threat to the interests of the
13 credit union's members or may threaten to impair
14 public confidence in the credit union, by written notice
15 served upon such party, suspend such party from office
16 or prohibit such party from further participation in any
17 manner in the conduct of the affairs of the credit union.

18 “(B) A copy of such notice shall also be served
19 upon the credit union. Such suspension or prohibition
20 shall remain in effect until such information, indict-
21 ment, or complaint is finally disposed of or until termi-
22 nated by the Board.

23 “(C)(i) In the event that a judgment of conviction
24 or an agreement to enter a pretrial diversion or other
25 similar program is entered against such party in con-

1 nection with a crime described in subparagraph (A)(i),
2 and at such time as such judgment is not subject to
3 further appellate review, the Board may, if continued
4 service or participation by such party may pose a
5 threat to the interests of the credit union's members or
6 may threaten to impair public confidence in the credit
7 union, issue and serve upon such party an order re-
8 moving such party from office or prohibiting such party
9 from further participation in any manner in the conduct
10 of the affairs of the credit union except with the con-
11 sent of the Board.

12 “(ii) In the event of such a judgment of conviction
13 or agreement in connection with a violation described
14 in subparagraph (A)(ii), the Board shall issue and serve
15 upon such party an order removing such party from
16 office or prohibiting such party from further participa-
17 tion in any manner in the conduct of the affairs of the
18 credit union except with the consent of the Board.

19 “(D) A copy of such order shall also be served
20 upon such credit union, whereupon such party (if a di-
21 rector or an officer) shall cease to be a director or offi-
22 cer of such credit union. A finding of not guilty or
23 other disposition of the charge shall not preclude the
24 Board from thereafter instituting proceedings to
25 remove such party from office or to prohibit further

1 participation in credit union affairs, pursuant to para-
2 graph (1), (2), or (3) of subsection (g) of this section.
3 Any notice of suspension or order of removal issued
4 under this paragraph shall remain effective and out-
5 standing until the completion of any hearing or appeal
6 authorized under paragraph (3) unless terminated by
7 the Board."

101ST CONGRESS
2D SESSION

S. 2651

To amend chapter 53 of title 31, United States Code, to require the Department of the Treasury to issue regulations concerning the identification of non-bank financial institutions subject to the Bank Secrecy Act, to prohibit illegal money transmitting businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17 (legislative day, APRIL 18), 1990

Mr. D'AMATO (for himself, Mr. DODD, Mr. WILSON, Mr. DECONCINI, Mr. DOLE, Mr. COATS, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend chapter 53 of title 31, United States Code, to require the Department of the Treasury to issue regulations concerning the identification of non-bank financial institutions subject to the Bank Secrecy Act, to prohibit illegal money transmitting businesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Money Laundering
5 Enforcement Act of 1990".

1 SEC. 2. IDENTIFICATION OF FINANCIAL INSTITUTIONS.

2 (a) A new section 5327 is added to Title 31, United
3 States Code, as follows:

4 "§ 5327. Identification of financial institutions

5 "By July 1, 1991, the Secretary shall prescribe regula-
6 tions providing that each depository institution identify its
7 customers which are financial institutions as defined in sec-
8 tion 5312(a)(2) (H) through (Y) and the regulations thereun-
9 der and which hold accounts with the depository institution.
10 Each depository institution shall report the names of and
11 other information about these financial institution customers
12 to the Secretary at such times and in such manner as the
13 Secretary shall prescribe by regulation. No person shall cause
14 or attempt to cause a depository institution not to file a
15 report required by this section or to file a report containing a
16 material omission or misstatement of fact. The Secretary
17 shall provide these reports to appropriate state financial insti-
18 tution supervisory agencies for supervisory purposes."

19 (b) Section 5321 of title 31, United States Code, is
20 amended by adding a new subparagraph (a)(7) as follows:

21 "(7)(A) The Secretary may impose a civil penalty on
22 any person who willfully violates any provision of section
23 5327 or a regulation prescribed thereunder.

24 "(B) The amount of any civil money penalty imposed
25 under subparagraph (A) shall not exceed \$10,000 per day for
26 each day a report is not filed or a report containing a materi-

1 al omission or misstatement of fact remains on file with the
2 Secretary.”.

3 **SEC. 3. PROHIBITION OF ILLEGAL MONEY TRANSMITTING**
4 **BUSINESSES.**

5 (a) Title 18, United States Code, is amended by adding
6 the following Section:

7 **“§ 1956a. Prohibition of illegal money transmitting busi-**
8 **nesses**

9 “(a) Whoever intentionally conducts, finances, manages,
10 supervises, directs, or owns all or part of an illegal money
11 transmitting business shall be fined not more than \$20,000 or
12 imprisoned not more than five years, or both.

13 “(b) As used in this section—

14 “(1) ‘illegal money transmitting business’ means a
15 money transmitting business which—

16 “(i) is an intentional violation of the law of a
17 State or political subdivision in which it is con-
18 ducted;

19 “(ii) involves one or more persons who con-
20 duct, finance, manage, supervise, direct, or own
21 all or part of such business; and

22 “(iii) has been or remains in substantially
23 continuous operation for a period in excess of
24 thirty days or has a gross revenue of \$2,000 in
25 any single day;

1 “(2) ‘money transmitting’ includes but is not limit-
2 ed to transferring funds on behalf of the public by any
3 and all means including but not limited to transfers
4 within this country or to locations abroad by wire,
5 check, draft, facsimile or courier; and

6 “(3) ‘State’ means any State of the United States,
7 the District of Columbia, the Commonwealth of Puerto
8 Rico, and any territory or possession of the United
9 States.

10 “(c) If one or more persons conduct, finance, manage,
11 supervise, direct, or own all or part of a money transmitting
12 business and such business operates for two or more succes-
13 sive days, then, for the purpose of obtaining warrants for
14 arrests, interceptions, and other searches and seizures, proba-
15 ble cause that the business receives gross revenue in excess
16 of \$2,000 in any single day shall be deemed to have been
17 established.

18 “(d) Any property, including money, used in violation of
19 the provisions of this section may be seized and forfeited to
20 the United States. All provisions of law relating to the sei-
21 zure, summary, and judicial forfeiture procedures, and con-
22 demnation of vessels, vehicles, merchandise, and baggage for
23 violation of the customs laws; the disposition of such vessels,
24 vehicles, merchandise, and baggage or the proceeds from
25 such sale; the remission or mitigation of such forfeitures; and

1 the compromise of claims and the award of compensation to
2 informers in respect of such forfeitures shall apply to seizures
3 and forfeitures incurred or alleged to have been incurred
4 under the provisions of this section, insofar as applicable and
5 not inconsistent with such provisions. Such duties as are im-
6 posed upon the collector of customs or any other person in
7 respect to the seizure and forfeiture of vessels, vehicles, mer-
8 chandise, and baggage under the customs laws shall be per-
9 formed with respect to seizures and forfeitures of property
10 used or intended for use in violation of this section by such
11 officers, agents, or other persons as may be designated for
12 that purpose by the Attorney General."

13 (b) Section 1961 of title 18, United States Code, is
14 amended by inserting after "section 1956 (relating to the
15 laundering of monetary instruments)": "section 1956a
16 (relating to the prohibition of illegal money transmitting busi-
17 nesses)".

18 **SEC. 4. COMPLIANCE PROCEDURES.**

19 Section 5318(a)(2) of title 31, United States Code, is
20 amended by inserting before the semicolon "or to guard
21 against money laundering".

22 **SEC. 5. NONDISCLOSURE OF ORDERS.**

23 Section 5326 of title 31, United States Code, is amend-
24 ed by adding at the end the following:

1 “(c) NONDISCLOSURE OF ORDERS.—No financial insti-
2 tution or officer, director, employee or agent of a financial
3 institution subject to an order under this section may disclose
4 the existence of or terms of the order to any person except as
5 prescribed by the Secretary.”.

6 SEC. 6. PROVISIONS RELATING TO RECORDKEEPING WITH RE-
7 SPECT TO CERTAIN INTERNATIONAL FUNDS
8 TRANSFERS.

9 Section 21(b) of the Federal Deposit Insurance Act (12
10 U.S.C. 1829b(b)) is amended—

11 (1) by striking “(b) Where” and inserting “(b)(1)
12 Where”; and

13 (2) by adding at the end the following new para-
14 graph:

15 “(2) FUNDS TRANSFERS.—

16 “(A) IN GENERAL.—Before January 1, 1991, the
17 Secretary, after consultation with the Board of Gover-
18 nors of the Federal Reserve System and State Banking
19 Departments, shall prescribe such final regulations as
20 may be appropriate to ensure that insured depository
21 institutions, businesses that provide check cashing serv-
22 ices, money transmitting businesses, and businesses
23 that issue or redeem money orders, travelers’ checks or
24 other similar instruments maintain such records of pay-
25 ment orders which—

1 “(i) involve international transactions; and

2 “(ii) direct transfers of funds over wholesale
3 funds transfer systems or on the books of any in-
4 sured depository institution, or on the books of
5 any business that provides check cashing services,
6 any money transmitting business, and any busi-
7 ness that issues or redeems money orders, travel-
8 ers’ checks or similar instruments as will have a
9 high degree of usefulness in criminal, tax, or regu-
10 latory investigations or proceedings.

11 “(B) FACTORS FOR CONSIDERATION.—In pre-
12 scribing the regulations required under subparagraph
13 (A), the Secretary shall consider—

14 “(i) the usefulness in criminal, tax, or regula-
15 tory investigations or proceedings of any record
16 required to be maintained pursuant to the pro-
17 posed regulations; and

18 “(ii) the effect the recordkeeping required
19 pursuant to such proposed regulations will have
20 on the cost and efficiency of the payment system.

21 “(C) AVAILABILITY OF RECORDS.—Any records
22 required to be maintained pursuant to the regulations
23 prescribed under subparagraph (A) shall be submitted or
24 made available to the Secretary upon request.”.

1 SEC. 7. AMENDMENTS RELATING TO THE ANTI-DRUG ABUSE
2 ACT OF 1988.

3 (a) Paragraph (3) of subsection 7601(b) of the Anti-Drug
4 Abuse Act of 1988 is amended by striking out "only during
5 the 2-year period beginning on such date" and inserting
6 "only during the 4-year period beginning on such date" in
7 lieu thereof.

8 (b) Paragraph (2) of subsection 7601(c) of the Anti-Drug
9 Abuse Act of 1988 is amended by striking out "after Decem-
10 ber 31, 1989" and inserting "after December 31, 1991" and
11 by striking out "before January 1, 1990" and inserting
12 "before January 1, 1992" in lieu thereof.

13 (c) Section 7203 of the Internal Revenue Code of 1986
14 is amended by replacing the last sentence thereof with the
15 following sentence: "In the case of a willful violation of any
16 provision of section 6050I, the first sentence of this section
17 shall be applied by substituting 'felony' for 'misdemeanor'
18 and '5 years' for '1 year'."

19 SEC. 8. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY
20 ACT.

21 (a) TRANSFER WITHOUT NOTICE.—Section 1112 of
22 the Right to Financial Privacy Act (12 U.S.C. 3412) is
23 amended—

24 (1) by striking subsections (b), (c), and (f);

25 (2) by redesignating subsections (d) and (e) as sub-
26 sections (b) and (c) respectively; and

1 (3) by striking subsection (a) and inserting the
2 following:

3 “(a) Financial records originally obtained by an agency
4 in accordance with this title may be transferred to another
5 agency without notice to the customer if there is reason to
6 believe that the records are relevant to a matter within the
7 jurisdiction of the receiving agency or appropriate for analy-
8 sis by the receiving agency for law enforcement purposes.”.

9 (b) EXCEPTION.—Section 1113 of the Right to Finan-
10 cial Privacy Act (12 U.S.C. 3413) by adding a new subsec-
11 tion as follows:

12 “(p) EXCEPTION.—This title does not apply to a trans-
13 fer by a financial institution or supervisory agency, or any
14 officer, director, employee, or agent of a financial institution
15 or a supervisory agency, to the Secretary of the Treasury of
16 financial records which such financial institution or superviso-
17 ry agency has reason to believe may be relevant to a possible
18 violation of a provision of subchapter II of chapter 53 of title
19 31, United States Code.”.

20 (c) GOOD FAITH DEFENSE.—Section 1117(c) of the
21 Right to Privacy Act (12 U.S.C. 3417(c)) is amended to read
22 as follows:

23 “(c) GOOD FAITH DEFENSE.—Any financial institution
24 or agent or employment thereof making a disclosure of finan-
25 cial records or information in good faith either in reliance

1 upon a certificate by any Government authority pursuant to
2 section 3413 (l) or (p) of this title, shall not be liable to the
3 customer for such disclosure under any constitution, law, or
4 regulation of any States or political subdivision."

101ST CONGRESS
2D SESSION

H. R. 3848

IN THE SENATE OF THE UNITED STATES

APRIL 26 (legislative day, APRIL 18), 1990

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To require Federal depository institutions regulatory agencies to
take additional enforcement actions against depository insti-
tutions engaging in money laundering, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Depository Institution
5 Money Laundering Amendments of 1990".

6 **SEC. 2. AUTHORITY TO APPOINT CONSERVATOR FOR INSURED**

7 **DEPOSITORY INSTITUTIONS CONVICTED OF**

8 **MONEY LAUNDERING.**

9 (a) NATIONAL BANKS.—

1 (1) IN GENERAL.—Section 203(a) of the Bank
2 Conservation Act (12 U.S.C. 203(a)) is amended—

3 (A) by redesignating paragraphs (6), (7), and
4 (8) as paragraphs (7), (8), and (9), respectively;
5 and

6 (B) by inserting after paragraph (5) the fol-
7 lowing new paragraph:

8 “(6) the bank is found guilty of any money laun-
9 dering offense;”.

10 (2) FACTORS REQUIRED TO BE CONSIDERED; EX-
11 CEPTION IN CASE OF CHANGE IN CONTROL.—Section
12 203 of the Bank Conservation Act (12 U.S.C. 203) is
13 amended by adding at the end the following new sub-
14 section:

15 “(f) SPECIAL RULES RELATING TO APPOINTMENT OF
16 CONSERVATOR UNDER SUBSECTION (a)(6).—

17 “(1) FACTORS FOR CONSIDERATION IN APPOINT-
18 ING CONSERVATOR.—In making any determination
19 under subsection (a)(6) to appoint a conservator for any
20 national bank, the Comptroller of the Currency shall
21 take into account the following factors:

22 “(A) The extent to which directors or senior
23 executive officers (as defined by the Comptroller
24 pursuant to section 32(f) of the Federal Deposit
25 Insurance Act) of the national bank knew of, or

1 were involved in, the commission of the money
2 laundering offense of which the bank was found
3 guilty.

4 “(B) The extent to which the offense oc-
5 curred despite the existence of policies and proce-
6 dures within the national bank which were de-
7 signed to prevent the occurrence of any such
8 offense.

9 “(C) The extent to which the national bank
10 has fully cooperated with law enforcement au-
11 thorities with respect to the commission of the
12 money laundering offense of which the bank was
13 found guilty.

14 “(D) The extent to which the national bank
15 has implemented additional internal controls (since
16 the commission of the offense of which the nation-
17 al bank was found guilty) to prevent the occur-
18 rence of any other money laundering offense.

19 “(2) CHANGE IN CONTROL EXCEPTION.—If the
20 ownership or control of any national bank referred to
21 in subsection (a)(6) is acquired (as defined in section
22 13(f)(8)(B) of the Federal Deposit Insurance Act)—

23 “(A) after the commission of any money
24 laundering offense;

1 “(B) by any person who was not an institu-
2 tion-affiliated party of the bank, or any affiliate of
3 any such party (as such terms are defined in sec-
4 tion 3 of the Federal Deposit Insurance Act) at
5 the time of the offense; and

6 “(C) in an arms-length transaction (as deter-
7 mined by the Comptroller) which was entered into
8 in good faith by such person,
9 subsection (a)(6) shall not apply to such national bank
10 with respect to such offense.

11 “(3) MONEY LAUNDERING OFFENSE DEFINED.—
12 For purposes of this subsection and subsection (a)(6),
13 the term ‘money laundering offense’ means any offense
14 under section 1956 or 1957 of title 18, United States
15 Code, or section 5322 of title 31, United States
16 Code.”.

17 (b) INSURED SAVINGS ASSOCIATIONS.—

18 (1) FEDERAL SAVINGS ASSOCIATIONS.—Section
19 5(d)(2)(A) of the Home Owners’ Loan Act (12 U.S.C.
20 1464(d)(2)(A)) is amended—

21 (A) by redesignating clauses (vii) and (viii) as
22 clauses (viii) and (ix), respectively; and

23 (B) by inserting after clause (vi) the following
24 new clause:

1 “(vii) the association is found guilty of
2 any money laundering offense;”.

3 (2) STATE SAVINGS ASSOCIATIONS.—Section
4 5(d)(2)(C) of the Home Owners’ Loan Act (12 U.S.C.
5 1464(d)(2)(C)) is amended—

6 (A) by redesignating clauses (v) and (vi) as
7 clauses (vi) and (vii), respectively; and

8 (B) by inserting after clause (iv) the following
9 new clause:

10 “(v) the association is found guilty of
11 any money laundering offense;”.

12 (3) FACTORS REQUIRED TO BE CONSIDERED; EX-
13 CEPTION IN CASE OF CHANGE IN CONTROL.—Section
14 5(d)(2) of the Home Owners’ Loan Act (12 U.S.C.
15 1464(d)(2)) is amended by adding at the end the follow-
16 ing new subparagraphs:

17 “(J) FACTORS FOR CONSIDERATION IN AP-
18 POINTING CONSERVATOR OR RECEIVER UNDER
19 SUBPARAGRAPH (A)(vii) OR (C)(v).—In making any
20 determination under subparagraph (A)(vii) or
21 (C)(v) to appoint any conservator or receiver for
22 any savings association, the Director shall take
23 into account the following factors:

24 “(i) The extent to which directors,
25 trustees, or senior executive officers (as de-

1 fined by the Director pursuant to section
2 32(f) of the Federal Deposit Insurance Act)
3 of the savings association knew of, or were
4 involved in, the commission of the money
5 laundering offense of which the association
6 was found guilty.

7 “(ii) The extent to which the offense oc-
8 curred despite the existence of policies and
9 procedures within the savings association
10 which were designed to prevent the occur-
11 rence of any such offense.

12 “(iii) The extent to which the savings
13 association has fully cooperated with law en-
14 forcement authorities with respect to the
15 commission of the money laundering offense
16 of which the association was found guilty.

17 “(iv) The extent to which the savings
18 association has implemented additional inter-
19 nal controls (since the commission of the
20 money laundering offense of which the sav-
21 ings association was found guilty) to prevent
22 the occurrence of any other money launder-
23 ing offense.

24 “(K) CHANGE IN CONTROL EXCEPTION
25 UNDER SUBPARAGRAPH (A)(vii) OR (C)(v).—If the

1 ownership or control of any savings association
2 referred to in subparagraph (A)(vii) or (C)(v) is ac-
3 quired (as defined in section 13(f)(8)(B) of the
4 Federal Deposit Insurance Act)—

5 “(i) after the commission of any money
6 laundering offense;

7 “(ii) by any person who was not an in-
8 stitution-affiliated party of the association, or
9 any affiliate of any such party (as such terms
10 are defined in section 3 of the Federal De-
11 posit Insurance Act) at the time of the of-
12 fense; and

13 “(iii) in an arms-length transaction (as
14 determined by the Director) which was en-
15 tered into in good faith by such person,
16 subparagraph (A)(vii) or (C)(v), as the case may
17 be, shall not apply to such association with re-
18 spect to such offense.

19 “(L) MONEY LAUNDERING OFFENSE DE-
20 FINED.—For purposes of subparagraphs (A)(vii),
21 (C)(v), (J), and (K), the term ‘money laundering
22 offense’ means any offense under section 1956 or
23 1957 of title 18, United States Code, or section
24 5322 of title 31, United States Code.”

1 (4) CONFORMING AMENDMENT.—Section
2 5(d)(2)(D) of the Home Owners' Loan Act (12 U.S.C.
3 1464(d)(2)(D)) is amended by adding at the end the fol-
4 lowing new clause:

5 “(iii) In the case of any determination
6 by the Director that the ground specified in
7 subparagraph (C)(v) exists with respect to
8 any insured State savings association, clause
9 (ii) of this subparagraph shall be applied by
10 substituting ‘10 days’ for ‘30 days’.”.

11 (c) INSURED STATE BANKS.—

12 (1) IN GENERAL.—Section 11(c) of the Federal
13 Deposit Insurance Act (12 U.S.C. 1821(c)) is amended
14 by adding at the end the following new paragraph:

15 “(10) APPOINTMENT OF CONSERVATOR UPON
16 CONVICTION FOR MONEY LAUNDERING.—

17 “(A) IN GENERAL.—The Board of Directors
18 may appoint itself conservator for any insured
19 State bank which is found guilty of any money
20 laundering offense.

21 “(B) FACTORS FOR CONSIDERATION IN AP-
22 POINTING CONSERVATOR.—In making any deter-
23 mination under subparagraph (A) to appoint the
24 Corporation conservator for any insured State

1 bank, the Board of Directors shall take into ac-
2 count the following factors:

3 "(i) The extent to which directors or
4 senior executive officers (as defined by the
5 Corporation pursuant to section 32(f)) of the
6 bank knew of, or were involved in, the com-
7 mission of the money laundering offense of
8 which the bank was found guilty.

9 "(ii) The extent to which the offense oc-
10 curred despite the existence of policies and
11 procedures within the bank which were de-
12 signed to prevent the occurrence of any such
13 offense.

14 "(iii) The extent to which the bank has
15 fully cooperated with law enforcement au-
16 thorities with respect to the commission of
17 the money laundering offense of which the
18 bank was found guilty.

19 "(iv) The extent to which the bank has
20 implemented additional internal controls
21 (since the commission of the offense of which
22 the bank was found guilty) to prevent the oc-
23 currence of any other money laundering of-
24 fense.

1 “(C) NOTICE AND OPPORTUNITY FOR AP-
2 POINTMENT OF CONSERVATOR BY STATE BANK-
3 ING SUPERVISOR.—If the Board of Directors de-
4 termines that the Corporation should be appointed
5 conservator under subparagraph (A) for any in-
6 sured State bank—

7 “(i) the Board of Directors shall
8 promptly notify the State banking supervisor
9 of such bank of such determination; and

10 “(ii) the authority to appoint the Corpo-
11 ration conservator for such bank under sub-
12 paragraph (A) shall be effective only if no
13 conservator has been appointed by such su-
14 pervisor for such bank before the end of the
15 10-day period beginning on the date such su-
16 pervisor receives notice under clause (i).

17 “(D) CHANGE IN CONTROL EXCEPTION
18 UNDER SUBPARAGRAPH (A).—If the ownership or
19 control of any insured State bank referred to in
20 subparagraph (A) is acquired (as defined in section
21 13(f)(8)(B))—

22 “(i) after the commission of any money
23 laundering offense;

24 “(ii) by any person who was not an in-
25 stitution-affiliated party of the bank, or any

1 affiliate of any such party at the time of the
2 offense; and

3 “(iii) in an arms-length transaction (as
4 determined by the Board of Directors) which
5 was entered into in good faith by such
6 person,

7 subparagraph (A) shall not apply to such bank
8 with respect to such offense.

9 “(E) MONEY LAUNDERING OFFENSE DE-
10 FINED.—For purposes of this paragraph, the term
11 ‘money laundering offense’ means any offense
12 under section 1956 or 1957 of title 18, United
13 States Code, or section 5322 of title 31, United
14 States Code.”.

15 (2) TECHNICAL AND CONFORMING AMEND-
16 MENT.—Section 11(c)(9) of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1821(c)(9)) is amended by striking
18 “paragraph (4) or (6)” and inserting “paragraph (4),
19 (6), or (10)”.

20 (d) INSURED CREDIT UNIONS.—

21 (1) IN GENERAL.—Section 206(h)(1) of the Fed-
22 eral Credit Union Act (12 U.S.C. 1786(h)(1)) is
23 amended—

1 (A) by redesignating subparagraphs (C) and
2 (D) as subparagraphs (D) and (E), respectively;
3 and

4 (B) by inserting after subparagraph (B) the
5 following new subparagraph:

6 "(C) the insured credit union is found guilty
7 of any money laundering offense;"

8 (2) FACTORS REQUIRED TO BE CONSIDERED;
9 DEFINITION.—Section 206(h) of the Federal Credit
10 Union Act (12 U.S.C. 1786(h)) is amended—

11 (A) by redesignating paragraph (9) as para-
12 graph (10); and

13 (B) by inserting after paragraph (8) the fol-
14 lowing new paragraph:

15 "(9) FACTORS FOR CONSIDERATION IN APPOINT-
16 ING CONSERVATOR UNDER PARAGRAPH (1)(C); DEFINI-
17 TION.—

18 "(A) FACTORS FOR CONSIDERATION IN AP-
19 POINTING CONSERVATOR.—In making any deter-
20 mination under paragraph (1)(C) to appoint itself
21 conservator for any insured credit union, the
22 Board shall take into account the following
23 factors:

24 "(i) The extent to which directors, com-
25 mittee members, or senior executive officers

1 (as defined by the Board in regulations which
2 the Board shall prescribe) of the credit union
3 knew of, or were involved in, the commission
4 of the money laundering offense of which the
5 credit union was found guilty.

6 “(ii) The extent to which the offense oc-
7 curred despite the existence of policies and
8 procedures within the credit union which
9 were designed to prevent the occurrence of
10 any such offense.

11 “(iii) The extent to which the credit
12 union has fully cooperated with law enforce-
13 ment authorities with respect to the commis-
14 sion of the money laundering offense of
15 which the credit union was convicted.

16 “(iv) The extent to which the credit
17 union has implemented additional internal
18 controls (since the commission of the offense
19 of which the credit union was found guilty)
20 to prevent the occurrence of any other
21 money laundering offense.

22 “(B) MONEY LAUNDERING OFFENSE DE-
23 FINED.—For purposes of this paragraph and para-
24 graphs (1)(C) and (2)(C), the term ‘money launder-
25 ing offense’ means any offense under section 1956

1 or 1957 of title 18, United States Code, or sec-
2 tion 5322 of title 31, United States Code.”.

3 (3) CONFORMING AMENDMENT.—Section
4 206(h)(2) of the Federal Credit Union Act (12 U.S.C.
5 1786(h)(2)) is amended by adding at the end the fol-
6 lowing new subparagraph:

7 “(C) APPLICATION IN CASE OF MONEY
8 LAUNDERING OFFENSE.—In the case of any de-
9 termination by the Board that the ground speci-
10 fied in paragraph (1)(C) exists with respect to any
11 insured credit union, subparagraph (B) of this
12 paragraph shall be applied by substituting ‘10
13 days’ for ‘30 days’.”.

14 SEC. 3. REVOCATION OF CHARTER OF FEDERAL DEPOSITORY
15 INSTITUTIONS AUTHORIZED UPON CONVICTION
16 OF INSTITUTION AND CERTAIN DIRECTORS AND
17 OFFICERS FOR MONEY LAUNDERING OF-
18 FENSES.

19 (a) NATIONAL BANKS.—Section 5239 of the Revised
20 Statutes (12 U.S.C. 93) is amended by adding at the end the
21 following new subsection:

22 “(d) FORFEITURE OF FRANCHISE FOR MONEY LAUN-
23 DERING OFFENSES.—

24 “(1) NOTICE OF INTENTION TO DECLARE CHAR-
25 TER FORFEITED.—If—

1 “(A) any national bank, including for pur-
2 poses of this subsection any Federal branch (as
3 defined in section 3(r) of the Federal Deposit In-
4 surance Act); and

5 “(B) directors or senior executive officers (as
6 defined by the Comptroller of the Currency pursu-
7 ant to section 32(f) of the Federal Deposit Insur-
8 ance Act) of the bank,

9 are found guilty of any money laundering offense, the
10 Comptroller of the Currency shall issue a notice to the
11 national bank of the Comptroller’s intention to declare
12 all rights, privileges, and franchises of such bank to be
13 forfeited.

14 “(2) CONTENTS OF NOTICE.—Any notice issued
15 pursuant to paragraph (1) shall contain the date (not to
16 exceed 30 days after the date such notice is issued)
17 and the place of a hearing on the proposed forfeiture.

18 “(3) HEARING, FORFEITURE OF CHARTER.—If,
19 on the basis of the evidence presented at a hearing
20 conducted in accordance with section 554 of title 5,
21 United States Code, before the Comptroller of the Cur-
22 rency (or any person designated by the Comptroller for
23 such purpose), the Comptroller finds that, taking into
24 account the factors required to be considered under
25 paragraph (4), the gravity of the offense of which the

1 national bank was found guilty outweighs the benefits
2 which the continued operation of the bank may pro-
3 vide, the Comptroller may issue an order declaring all
4 rights, privileges, and franchises of such bank to be
5 forfeited.

6 “(4) FACTORS FOR CONSIDERATION IN CHARTER
7 REVOCATION PROCEEDING.—In making any determi-
8 nation under paragraph (3) to declare the forfeiture of
9 all rights, privileges, and franchises of any national
10 bank, the Comptroller of the Currency shall take into
11 account the following factors:

12 “(A) The extent to which directors or senior
13 executive officers (as defined by the Comptroller
14 pursuant to section 32(f) of the Federal Deposit
15 Insurance Act) of the national bank knew of, or
16 were involved in, the commission of the money
17 laundering offense of which the bank was found
18 guilty.

19 “(B) The extent to which the offense oc-
20 curred despite the existence of policies and proce-
21 dures within the national bank which were de-
22 signed to prevent the occurrence of any such
23 offense.

24 “(C) The extent to which the national bank
25 has fully cooperated with law enforcement au-

1 thorities with respect to the commission of the
2 money laundering offense of which the bank was
3 found guilty.

4 “(D) The extent to which the national bank
5 has implemented additional internal controls (since
6 the commission of the offense of which the bank
7 was found guilty) to prevent the occurrence of any
8 other money laundering offense.

9 “(5) APPEARANCE, CONSENT TO FORFEITURE.—
10 Unless the national bank shall appear at the hearing by
11 a duly authorized representative, the bank shall be
12 deemed to have consented to the forfeiture of all rights,
13 privileges, and franchises of the bank and the order
14 referred to in paragraph (3) may be issued.

15 “(6) JUDICIAL REVIEW.—Any order issued by the
16 Comptroller of the Currency under this subsection may
17 be reviewed in the manner provided in chapter 7 of
18 title 5, United States Code.

19 “(7) CHANGE IN CONTROL EXCEPTION.—If the
20 ownership or control of any national bank referred to
21 in paragraph (1) is acquired (as defined in section
22 13(f)(8)(B)) of the Federal Deposit Insurance Act)—

23 “(A) after the commission of any money
24 laundering offense;

1 “(B) by any person who was not an institu-
2 tion-affiliated party of the bank, or any affiliate of
3 any such party (as such terms are defined in sec-
4 tion 3 of the Federal Deposit Insurance Act), at
5 the time of the offense; and

6 “(C) in an arms-length transaction (as deter-
7 mined by the Comptroller) which was entered into
8 in good faith by such person,
9 this subsection shall not apply to such national bank
10 with respect to such offense.

11 “(8) MONEY LAUNDERING OFFENSE DEFINED.—
12 For purposes of this subsection, the term ‘money laun-
13 dering offense’ means any offense under section 1956
14 or 1957 of title 18, United States Code, or section
15 5322 of title 31, United States Code.”.

16 (b) FEDERAL SAVINGS ASSOCIATIONS.—Section 5 of
17 the Home Owners’ Loan Act (12 U.S.C. 1464) is amended
18 by adding at the end the following new subsection:

19 “(w) FORFEITURE OF CHARTER FOR MONEY LAUN-
20 DERING OFFENSES.—

21 “(1) NOTICE OF INTENTION TO DECLARE CHAR-
22 TER FORFEITED.—If—

23 “(A) any Federal savings association; and

24 “(B) directors, trustees, or senior executive
25 officers (as defined by the Director pursuant to

1 section 32(f) of the Federal Deposit Insurance
2 Act),
3 are found guilty of any money laundering offense, the
4 Director shall issue a notice to the Federal savings as-
5 sociation of the Director's intention to declare the
6 charter of the association to be forfeited.

7 “(2) CONTENTS OF NOTICE.—Any notice issued
8 pursuant to paragraph (1) shall contain the date (not to
9 exceed 30 days after the date such notice is issued)
10 and the place of a hearing on the proposed forfeiture.

11 “(3) HEARING, FORFEITURE OF CHARTER.—If,
12 on the basis of the evidence presented at a hearing
13 conducted in accordance with section 554 of title 5,
14 United States Code, before the Director (or any person
15 designated by the Director for such purpose), the Di-
16 rector finds that, taking into account the factors re-
17 quired to be considered under paragraph (4), the gravi-
18 ty of the offense of which the Federal savings associa-
19 tion was found guilty outweighs the benefits which the
20 continued operation of the association may provide, the
21 Director may issue an order declaring the charter of
22 the association to be forfeited.

23 “(4) FACTORS FOR CONSIDERATION IN CHARTER
24 REVOCATION PROCEEDING.—In making any determi-
25 nation under paragraph (3) to declare the forfeiture of

1 the charter of any Federal savings association, the Di-
2 rector shall take into account the following factors:

3 "(A) The extent to which directors, trustees,
4 or senior executive officers (as defined by the Di-
5 rector pursuant to section 32(f) of the Federal De-
6 posit Insurance Act) of the savings association
7 knew of, or were involved in, the commission of
8 the money laundering offense of which the asso-
9 ciation was found guilty.

10 "(B) The extent to which the offense oc-
11 curred despite the existence of policies and proce-
12 dures within the savings association which were
13 designed to prevent the occurrence of any such
14 offense.

15 "(C) The extent to which the savings asso-
16 ciation has fully cooperated with law enforcement
17 authorities with respect to the commission of the
18 money laundering offense of which the association
19 was found guilty.

20 "(D) The extent to which the savings asso-
21 ciation has implemented additional internal con-
22 trols (since the commission of the offense of which
23 the savings association was found guilty) to pre-
24 vent the occurrence of any other money launder-
25 ing offense.

1 “(5) APPEARANCE, CONSENT TO FORFEITURE.—

2 Unless the Federal savings association shall appear at
3 the hearing by a duly authorized representative, the
4 association shall be deemed to have consented to the
5 forfeiture of the charter of the association and the
6 order referred to in paragraph (3) may be issued.

7 “(6) JUDICIAL REVIEW.—Any order issued by the
8 Director under this subsection may be reviewed in the
9 manner provided in chapter 7 of title 5, United States
10 Code.

11 “(7) CHANGE IN CONTROL EXCEPTION.—If the
12 ownership or control of any Federal savings association
13 referred to in paragraph (1) is acquired (as defined in
14 section 13(f)(8)(B) of the Federal Deposit Insurance
15 Act)—

16 “(A) after the commission of any money
17 laundering offense;

18 “(B) by any person who was not an institu-
19 tion-affiliated party of the association, or any affil-
20 iate of any such party (as such terms are defined
21 in section 3 of the Federal Deposit Insurance
22 Act), at the time of the offense; and

23 “(C) in an arms-length transaction (as deter-
24 mined by the Director) which was entered into in
25 good faith by such person,

1 this subsection shall not apply with respect to such
2 association. —

3 “(8) MONEY LAUNDERING OFFENSE DEFINED.—

4 For purposes of this subsection, the term ‘money laun-
5 dering offense’ means any offense under section 1956
6 or 1957 of title 18, United States Code, or section
7 5322 of title 31, United States Code.”.

8 (c) FEDERAL CREDIT UNIONS.—Title I of the Federal
9 Credit Union Act (12 U.S.C. 1752 et seq.) is amended by
10 adding at the end the following new section:

11 “SEC. 130. FORFEITURE OF ORGANIZATION CERTIFICATE FOR
12 MONEY LAUNDERING OFFENSES.

13 “(a) NOTICE OF INTENTION TO DECLARE CHARTER
14 FORFEITED.—If—

15 “(1) any Federal credit union; and

16 “(2) directors, committee members, or senior ex-
17 ecutive officers (as defined by the Board in regulations
18 which the Board shall prescribe) of the credit union,

19 are found guilty of any money laundering offense, the Board
20 shall issue a notice to the Federal credit union of the Board’s
21 intention to declare the charter of the credit union to be
22 forfeited.

23 “(b) CONTENTS OF NOTICE.—Any notice issued pursu-
24 ant to subsection (a) shall contain the date (not to exceed 30

1 days after the date such notice is issued) and the place of a
2 hearing on the proposed forfeiture.

3 “(c) HEARING, FORFEITURE OF CHARTER.—If, on the
4 basis of the evidence presented at a hearing conducted in
5 accordance with section 554 of title 5, United States Code,
6 before the Board (or any person designated by the Board for
7 such purpose), the Board finds that, taking into account the
8 factors required to be considered under subsection (d), the
9 gravity of the offense of which the Federal credit union was
10 found guilty outweighs the benefits which the continued oper-
11 ation of the credit union may provide, the Board may issue
12 an order declaring the charter of the credit union to be
13 forfeited.

14 “(d) FACTORS FOR CONSIDERATION IN CHARTER
15 REVOCATION PROCEEDING.—In making any determination
16 under subsection (c) to declare the forfeiture of the charter of
17 any Federal credit union, the Board shall take into account
18 the following factors:

19 “(1) The extent to which directors, committee
20 members, or senior executive officers (as defined by the
21 Board in regulations which the Board shall prescribe)
22 of the credit union knew of, or were involved in, the
23 commission of the money laundering offense of which
24 the credit union was found guilty.

1 “(2) The extent to which the offense occurred de-
2 spite the existence of policies and procedures within
3 the credit union which were designed to prevent the
4 occurrence of any such offense.

5 “(3) The extent to which the credit union has
6 fully cooperated with law enforcement authorities with
7 respect to the commission of the money laundering of-
8 fense of which the credit union was found guilty.

9 “(4) The extent to which the credit union has im-
10 plemented additional internal controls (since the com-
11 mission of the offense of which the credit union was
12 found guilty) to prevent the occurrence of any other
13 money laundering offense.

14 “(e) APPEARANCE, CONSENT TO FORFEITURE.—
15 Unless the Federal credit union shall appear at the hearing
16 by a duly authorized representative, the credit union shall be
17 deemed to have consented to the forfeiture of the charter of
18 the credit union and the order referred to in subsection (c)
19 may be issued.

20 “(f) JUDICIAL REVIEW.—Any order issued by the
21 Board under this subsection may be reviewed in the manner
22 provided in chapter 7 of title 5, United States Code.

23 “(g) MONEY LAUNDERING OFFENSE DEFINED.—For
24 purposes of this section, the term ‘money laundering offense’
25 means any offense under section 1956 or 1957 of title 18,

1 United States Code, or section 5322 of title 31, United
2 States Code.”.

3 SEC. 4. AUTHORITY TO TERMINATE THE INSURED STATUS OF
4 STATE DEPOSITORY INSTITUTIONS CONVICTED
5 OF MONEY LAUNDERING.

6 (a) STATE DEPOSITORY INSTITUTIONS OTHER THAN
7 STATE CHARTERED CREDIT UNIONS.—

8 (1) TERMINATION AUTHORIZED UPON CONVIC-
9 TION OF DEPOSITORY INSTITUTION.—Section
10 8(a)(2)(A) of the Federal Deposit Insurance Act (12
11 U.S.C. 1818(a)(2)(A)) is amended—

12 (A) by redesignating clauses (ii) and (iii) as
13 clauses (iii) and (iv), respectively; and

14 (B) by inserting after clause (i) the following
15 new clause:

16 “(ii) any insured State depository insti-
17 tution is found guilty of any money launder-
18 ing offense;”.

19 (2) EXCEPTION IN CASE OF CHANGE IN CON-
20 TROL.—Section 8(a) of the Federal Deposit Insurance
21 Act (12 U.S.C. 1818(a)) is amended by adding at the
22 end the following new paragraph:

23 “(11) CHANGE IN CONTROL EXCEPTION.—If the
24 ownership or control of any State depository institution

1 referred to in paragraph (2)(A)(ii) is acquired (as de-
2 fined in section 13(f)(8)(B))—

3 “(A) after the commission of any money
4 laundering offense;

5 “(B) by any person who was not an institu-
6 tion-affiliated party of the institution, or any affili-
7 ate of any such party, at the time of the offense;
8 and

9 “(C) in an arms-length transaction (as deter-
10 mined by the Board of Directors) which was en-
11 tered into in good faith by such person,
12 paragraph (2)(A)(ii) shall not apply to such depository
13 institution with respect to such offense.”.

14 (3) HEARING ON TERMINATION REQUIRED UPON
15 CONVICTION OF INSTITUTION AND DIRECTORS AND
16 OFFICERS.—Section 8 of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1818) is amended by adding at
18 the end the following new subsection:

19 “(v) TERMINATION OF INSURANCE FOR MONEY LAUN-
20 DERING OFFENSES.—

21 “(1) NOTICE OF INTENTION TO TERMINATE IN-
22 SURANCE.—If—

23 “(A) any insured State depository institution;
24 and

1 “(B) directors or senior executive officers (as
2 defined by the Corporation pursuant to section
3 32(f)), of the State depository institution,
4 are found guilty of any money laundering offense, the
5 Board of Directors shall issue a notice to the depository
6 institution of the Board of Directors’ intention to
7 terminate the insured status of such depository institution.
8 tion.

9 “(2) NOTICE TO STATE BANKING SUPERVISOR.—
10 A copy of any notice issued under paragraph (1) to any
11 insured State depository institution shall promptly be
12 transmitted by the Board of Directors to the appropriate
13 State banking supervisor of such depository
14 institution.

15 “(3) CONTENTS OF NOTICE.—Any notice issued
16 pursuant to paragraph (1) shall contain the date (not to
17 exceed 30 days after the date such notice is issued)
18 and the place of a hearing on the proposed termination
19 of insured status.

20 “(4) HEARING, TERMINATION OF INSURED
21 STATUS.—If, on the basis of the evidence presented at
22 a hearing conducted in accordance with section 554 of
23 title 5, United States Code, before the Board of Directors
24 (or any person designated by the Board of Directors
25 for such purpose), the Board of Directors finds

1 that, taking into account the factors required to be con-
2 sidered under paragraph (5), the gravity of the offense
3 of which the depository institution was found guilty
4 outweighs the benefits which the continuation of the
5 insured status of the depository institution may pro-
6 vide, the Board of Directors may issue an order termi-
7 nating the insured status of such State depository insti-
8 tution effective not earlier than the end of the 10-day
9 period beginning on the date the State banking super-
10 visor (of such depository institution) receives notice of
11 the issuance of such order from the Board of Directors.

12 “(5) FACTORS FOR CONSIDERATION IN PROCEED-
13 ING TO TERMINATE INSURED STATUS.—In making
14 any determination under paragraph (4) to terminate the
15 insured status of any State depository institution, the
16 Board of Directors shall take into account the follow-
17 ing factors:

18 “(A) The extent to which directors, trustees,
19 or senior executive officers (as defined by the Cor-
20 poration pursuant to section 32(f)) of the deposito-
21 ry institution knew of, or were involved in, the
22 commission of the money laundering offense of
23 which the institution was found guilty.

24 “(B) The extent to which the offense oc-
25 curred despite the existence of policies and proce-

1 dures within the depository institution which were
2 designed to prevent the occurrence of any such
3 offense.

4 “(C) The extent to which the depository in-
5 stitution has fully cooperated with law enforce-
6 ment authorities with respect to the commission of
7 the money laundering offense of which the institu-
8 tion was found guilty.

9 “(D) The extent to which the depository in-
10 stitution has implemented additional internal con-
11 trols (since the commission of the offense of which
12 the depository institution was found guilty) to pre-
13 vent the occurrence of any other money launder-
14 ing offense.

15 “(6) APPEARANCE, CONSENT TO TERMINATION
16 OF INSURED STATUS.—Unless the State depository in-
17 stitution shall appear at the hearing by a duly author-
18 ized representative, the depository institution shall be
19 deemed to have consented to the termination of the in-
20 sured status of the depository institution and the order
21 referred to in paragraph (4) may be issued.

22 “(7) JUDICIAL REVIEW.—Any order issued by the
23 Board of Directors under this subsection may be re-
24 viewed in the manner provided in chapter 7 of title 5,
25 United States Code.

1 “(8) CHANGE IN CONTROL EXCEPTION.—If the
2 ownership or control of any depository institution re-
3 ferred to in paragraph (1) is acquired (as defined in sec-
4 tion 13(f)(8)(B))—

5 “(A) after the commission of any money
6 laundering offense;

7 “(B) by any person who was not an institu-
8 tion-affiliated party of the institution, or any affili-
9 ate of any such party, at the time of the offense;
10 and

11 “(C) in an arms-length transaction (as deter-
12 mined by the Board of Directors) which was en-
13 tered into in good faith by such person,
14 this subsection shall not apply to such depository insti-
15 tution with respect to such offense.

16 “(9) MONEY LAUNDERING OFFENSE DEFINED.—
17 For purposes of this subsection and paragraphs
18 (2)(A)(ii) and (11) of subsection (a), the term ‘money
19 laundering offense’ means any offense under section
20 1956 or 1957 of title 18, United States Code, or sec-
21 tion 5322 of title 31, United States Code.”.

22 (b) STATE CHARTERED CREDIT UNIONS.—

23 (1) TERMINATION AUTHORIZED UPON CONVIC-
24 TION OF DEPOSITORY INSTITUTION.—The 1st sen-
25 tence of section 206(b)(1) of the Federal Credit Union

1 Act (12 U.S.C. 1786(b)(1)) is amended by inserting "or
2 is found guilty of any money laundering offense," after
3 "entered into with the Board,".

4 (2) HEARING ON TERMINATION REQUIRED UPON
5 CONVICTION OF INSTITUTION AND DIRECTORS AND
6 OFFICERS.—Section 206 of the Federal Credit Union
7 Act (12 U.S.C. 1786) is amended by adding at the end
8 the following new subsection:

9 "(t) TERMINATION OF INSURANCE FOR MONEY LAUN-
10 DERING OFFENSES.—

11 "(1) NOTICE OF INTENTION TO TERMINATE IN-
12 SURANCE.—If—

13 "(A) any insured State chartered credit
14 union; and

15 "(B) directors, committee members, or senior
16 executive officers (as defined by the Board in reg-
17 ulations which the Board shall prescribe) of the
18 credit union,

19 are found guilty of any money laundering offense, the
20 Board shall issue a notice to the credit union of the
21 Board's intention to terminate the insured status of
22 such credit union.

23 "(2) NOTICE TO STATE CREDIT UNION SUPERVI-
24 SOR.—A copy of any notice issued under paragraph (1)
25 to any insured State chartered credit union shall

1 promptly be transmitted by the Board to the appropri-
2 ate State credit union supervisor of such credit union.

3 "(3) CONTENTS OF NOTICE.—Any notice issued
4 pursuant to paragraph (1) shall contain the date (not to
5 exceed 30 days after the date such notice is issued)
6 and the place of a hearing on the proposed termination
7 of insured status.

8 "(4) HEARING, TERMINATION OF INSURED
9 STATUS.—If, on the basis of the evidence presented at
10 a hearing conducted in accordance with section 554 of
11 title 5, United States Code, before the Board (or any
12 person designated by the Board for such purpose), the
13 Board finds that, taking into account the factors re-
14 quired to be considered under paragraph (5), the gravi-
15 ty of the offense of which the credit union was found
16 guilty outweighs the benefits which the continuation of
17 the insured status of the credit union may provide, the
18 Board may issue an order terminating the insured
19 status of such State chartered credit union effective not
20 earlier than the end of the 10-day period beginning on
21 the date the State credit union supervisor (of such
22 credit union) receives notice of the issuance of such
23 order from the Board.

24 "(5) FACTORS FOR CONSIDERATION IN PROCEED-
25 ING TO TERMINATE INSURED STATUS.—In making

1 any determination under paragraph (4) to terminate the
2 insured status of any State chartered credit union, the
3 Board shall take into account the following factors:

4 "(A) The extent to which directors, commit-
5 tee members, or senior executive officers (as de-
6 fined by the Board in regulations which the Board
7 shall prescribe) of the credit union knew of, or
8 were involved in, the commission of the money
9 laundering offense of which the credit union was
10 found guilty.

11 "(B) The extent to which the offense oc-
12 curred despite the existence of policies and proce-
13 dures within the credit union which were designed
14 to prevent the occurrence of any such offense.

15 "(C) The extent to which the credit union
16 has fully cooperated with law enforcement au-
17 thorities with respect to the commission of the
18 money laundering offense of which the credit
19 union was found guilty.

20 "(D) The extent to which the credit union
21 has implemented additional internal controls (since
22 the commission of the offense of which the credit
23 union was found guilty) to prevent the occurrence
24 of any other money laundering offense.

1 “(6) APPEARANCE, CONSENT TO TERMINATION
2 OF INSURED STATUS.—Unless the State chartered
3 credit union shall appear at the hearing by a duly au-
4 thorized representative, the credit union shall be
5 deemed to have consented to the termination of insured
6 status of the credit union and the order referred to in
7 paragraph (4) may be issued.

8 “(7) JUDICIAL REVIEW.—Any order issued by the
9 Board under this subsection may be reviewed in the
10 manner provided in chapter 7 of title 5, United States
11 Code.

12 “(8) MONEY LAUNDERING OFFENSE DEFINED.—
13 For purposes of this subsection and subsection (b)(1),
14 the term ‘money laundering offense’ means any offense
15 under section 1956 or 1957 of title 18, United States
16 Code, or section 5322 of title 31, United States
17 Code.”.

18 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

19 (1) The 1st sentence of section 8(a)(7) of the Fed-
20 eral Deposit Insurance Act (12 U.S.C. 1818(a)(7)) is
21 amended by striking “this subsection,” and inserting
22 “this subsection or subsection (v),”.

23 (2) The 1st sentence of section 206(d)(1) of the
24 Federal Credit Union Act (12 U.S.C. 1786(d)(1)) is

1 amended by striking "(a)(1) or (b)" and inserting
2 "(a)(1), (b), or (t)".

3 **SEC. 5. MONEY LAUNDERING ENFORCEMENT ACTIVITIES.**

4 **(a) INCLUSION IN ANNUAL REPORTS REQUIRED.—**

5 Section 918(a) of the Financial Institutions Reform, Recov-
6 ery, and Enforcement Act of 1989 (12 U.S.C. 1833) is
7 amended—

8 (1) by redesignating paragraph (6) as paragraph
9 (8); and

10 (2) by inserting after paragraph (5) the following
11 new paragraphs:

12 "(6) The names and locations of all insured depos-
13 itory institutions (as defined in section 3(c)(2) of the
14 Federal Deposit Insurance Act), insured credit unions
15 (as defined in section 101(7) of the Federal Credit
16 Union Act), and institution-affiliated parties (as defined
17 in section 3(u) of the Federal Deposit Insurance Act
18 and section 206(r) of the Federal Credit Union Act)
19 which were found guilty of any offense under section
20 1956 or 1957 of title 18, United States Code, or sec-
21 tion 5322 of title 31, United States Code.

22 "(7) The actions taken by the appropriate agency
23 described in subsection (b) with respect to any insured
24 depository institution, insured credit union, or institu-
25 tion-affiliated party described in paragraph (6) as a

1 result of such institution, credit union, or party having
2 been found guilty of an offense under section 1956 or
3 1957 of title 18, United States Code, or section 5322
4 of title 31, United States Code.”.

5 (b) TECHNICAL CORRECTIONS TO PROVISIONS
6 RELATING TO MONEY LAUNDRY ENFORCEMENT
7 ACTIVITIES.—

8 (1) Section 5318(a)(1) of title 31, United States
9 Code, is amended—

10 (A) by striking “or the Postal Inspection
11 Service”; and

12 (B) by inserting “United States” before
13 “Postal Service”.

14 (2) Section 5322(a) of title 31, United States
15 Code, is amended by striking “imprisonment” and in-
16 serting “imprisoned for”.

17 (3) Section 8(b)(4) of the Federal Deposit Insur-
18 ance Act is amended by striking “subsections (c), (d),
19 (h), (i), (k), (l), (m), and (n)” and inserting “subsections
20 (c) through (s) and subsection (u)”.

21 SEC. 6. REMOVAL AND PROHIBITION ORDERS REQUIRED FOR
22 INSTITUTION-AFFILIATED PARTIES CONVICTED
23 OF MONEY LAUNDERING.

24 (a) DEPOSITORY INSTITUTIONS OTHER THAN CREDIT
25 UNIONS.—Section 8(e) of the Federal Deposit Insurance Act

1 (12 U.S.C. 1818(e)) is amended by inserting at the end the
2 following new paragraph:

3 “(8) REMOVAL OF INSTITUTION-AFFILIATED
4 PARTY CONVICTED OF MONEY LAUNDERING.—If any
5 institution-affiliated party is found guilty of any offense
6 under—

7 “(A) section 1956 or 1957 of title 18, United
8 States Code; or

9 “(B) section 5322 of title 31, United States
10 Code, in connection with a violation of section
11 5324 of such title,

12 the appropriate Federal banking agency shall issue an
13 order under paragraph (4) removing such party from
14 office or prohibiting any further participation by such
15 party in the conduct of the affairs of any insured de-
16 pository institution.”.

17 (b) CREDIT UNIONS.—Section 206(g) of the Federal
18 Credit Union Act (12 U.S.C. 1786(g)) is amended by adding
19 at the end the following new paragraph:

20 “(8) REMOVAL OF INSTITUTION-AFFILIATED
21 PARTY CONVICTED OF MONEY LAUNDERING.—If any
22 institution-affiliated party is found guilty of any offense
23 under—

24 “(A) section 1956 or 1957 of title 18, United
25 States Code; or

1 “(B) section 5322 of title 31, United States
2 Code, in connection with a violation of section
3 5324 of such title,
4 the Board shall issue an order under paragraph (4) re-
5 moving such party from office or prohibiting any fur-
6 ther participation by such party in the conduct of the
7 affairs of any insured credit union.”.

8 SEC. 7. CIVIL MONEY PENALTIES.

9 (a) IN GENERAL.—Section 5321(a)(6) of title 31,
10 United States Code, is amended to read as follows:

11 “(6) NEGLIGENCE.—

12 “(A) IN GENERAL.—The Secretary of the
13 Treasury may impose a civil money penalty of not
14 more than \$500 on any financial institution which
15 negligently violates any provision of this subchap-
16 ter or any regulation prescribed under this sub-
17 chapter.

18 “(B) PATTERN OF NEGLIGENT ACTIVITY.—
19 If any financial institution engages in a pattern of
20 negligent violations of any provision of this sub-
21 chapter or any regulation prescribed under this
22 subchapter, the Secretary of the Treasury may, in
23 addition to any penalty imposed under subpara-
24 graph (A) with respect to any such violation,

1 impose a civil money penalty of not more than
2 \$5,000 on the financial institution.”.

3 (b) EFFECTIVE DATE.—The amendment made by sub-
4 section (a) shall apply with respect to violations committed
5 after the date of the enactment of this Act.

6 SEC. 8. AUTHORITY TO ORDER DEPOSITORY INSTITUTIONS TO
7 OBTAIN COPIES OF CTRS FROM CUSTOMERS
8 WHICH ARE UNREGULATED BUSINESSES.

9 Section 5326 of title 31, United States Code, is
10 amended—

11 (1) by redesignating subsection (b) as subsection
12 (c); and

13 (2) by inserting after subsection (a) the following
14 new subsection:

15 “(b) AUTHORITY TO ORDER DEPOSITORY INSTITU-
16 TIONS TO OBTAIN REPORTS FROM CUSTOMERS.—

17 “(1) IN GENERAL.—The Secretary of the Treas-
18 ury may, by regulation or order, require any depository
19 institution (as defined in section 3(c) of the Federal De-
20 posit Insurance Act)—

21 “(A) to request any financial institution
22 (other than a depository institution) which en-
23 gages in any reportable transaction with the de-
24 pository institution to provide the depository insti-
25 tution with a copy of any report filed by the fi-

1 nancial institution under this subtitle with respect
2 to any prior transaction (between such financial
3 institution and any other person) which involved
4 any portion of the coins or currency (or monetary
5 instruments) which are involved in the reportable
6 transaction with the depository institution; and

7 “(B) if no copy of any report described in
8 subparagraph (A) is received by the depository in-
9 stitution in connection with any reportable trans-
10 action to which such subparagraph applies, to
11 submit (in addition to any report required under
12 this subtitle with respect to the reportable trans-
13 action) a written notice to the Secretary that the
14 financial institution failed to provide any copy of
15 such report.

16 “(2) REPORTABLE TRANSACTION DEFINED.—For
17 purposes of this subsection, the term ‘reportable trans-
18 action’ means any transaction involving coins or cur-
19 rency (or such other monetary instruments as the Sec-
20 retary may describe in the regulation or order) the
21 total amounts or denominations of which are equal to
22 or greater than an amount which the Secretary may
23 prescribe.”.

1 SEC. 9. UNIFORM STATE LICENSING AND REGULATION OF
2 CHECK CASHING SERVICES.

3 (a) UNIFORM LAWS AND ENFORCEMENT.—For pur-
4 poses of preventing money laundering and protecting the
5 payment system from fraud and abuse, it is the sense of the
6 Congress that the several States should—

7 (1) establish uniform laws for licensing and regu-
8 lating businesses which—

9 (A) provide check cashing services, transmit
10 money, or issue or redeem money orders, travel-
11 ers' checks, and other similar instruments; and

12 (B) are not depository institutions (as defined
13 in section 19(b)(1)(A) of the Federal Reserve Act);
14 and

15 (2) provide sufficient resources to the appropriate
16 State agency to enforce such laws and regulations pre-
17 scribed pursuant to such laws.

18 (b) MODEL STATUTE.—It is the sense of the Congress
19 that the several States should develop, through the auspices
20 of the National Conference of Commissioners on Uniform
21 State Laws, the American Law Institute, or such other
22 forum as the States may determine to be appropriate, a
23 model statute to carry out the goals described in subsection
24 (a) which would include the following:

25 (1) LICENSING REQUIREMENTS.—A requirement
26 that any issuer, redeemer, or cashier of travelers'

1 checks, checks, money orders, or similar instruments,
2 and any transmitter of money, other than a depository
3 institution (as defined in section 19(b)(1)(A) of the Fed-
4 eral Reserve Act), be licensed and regulated by an ap-
5 propriate State agency in order to engage in any such
6 activity within the State.

7 (2) LICENSING STANDARDS.—A requirement
8 that—

9 (A) in order for any issuer, redeemer, or
10 cashier of travelers' checks, checks, money orders,
11 or similar instruments, and any transmitter of
12 money to be licensed in the State, the appropriate
13 State agency shall review and approve—

14 (i) the business record and the capital
15 adequacy of the business seeking the license;
16 and

17 (ii) the competence, experience, integ-
18 rity, and financial ability of any individual
19 who—

20 (I) is a director, officer, or supervi-
21 sory employee of such business; or

22 (II) owns or controls such busi-
23 ness;

24 (B) as a condition for the issuance and con-
25 tinued validity of the license—

1 (i) the business may not impose, charge,
2 or collect any fee for cashing or redeeming
3 any travelers' check, check, money order or
4 similar instrument in excess of the amount
5 which is equal to the greater of—

6 (I) an amount equal to 1.5 percent
7 of the face amount of such check or
8 money order (not to exceed \$8); or

9 (II) 50 cents; and

10 (C) any record, on the part of any business
11 seeking the license or any person referred to in
12 subparagraph (A)(ii), of—

13 (i) any criminal activity;

14 (ii) any fraud or other act of personal
15 dishonesty;

16 (iii) any act, omission, or practice which
17 constitutes a breach of a fiduciary duty; or

18 (iv) any suspension or removal, by any
19 agency or department of the United States
20 or any State, from participation in the con-
21 duct of any federally or State licensed or
22 regulated business,

23 be grounds for the denial of any such license by
24 the appropriate State agency.

1 (3) PROCEDURES TO ENSURE COMPLIANCE WITH
2 FEDERAL CASH TRANSACTION REPORTING REQUIRE-
3 MENTS.—A civil or criminal penalty for operating any
4 business referred to in paragraph (1) without establish-
5 ing and complying with appropriate procedures to
6 ensure compliance with subchapter II of chapter 53 of
7 title 31, United States Code (relating to records and
8 reports on monetary instruments transactions).

9 (4) CRIMINAL PENALTIES FOR OPERATION OF
10 BUSINESS WITHOUT A LICENSE.—A criminal penalty
11 for operating any business referred to in paragraph (1)
12 without a license within the State after the end of an
13 appropriate transition period beginning on the date of
14 the enactment of such model statute by the State.

15 (c) STUDY REQUIRED.—The Secretary of the Treasury
16 shall conduct a study of—

17 (1) the progress made by the several States in de-
18 veloping and enacting a model statute which—

19 (A) meets the requirements of subsection (b);

20 and

21 (B) furthers the goals of—

22 (i) preventing money laundering by busi-
23 nesses which are required to be licensed
24 under any such statute; and

1 (ii) protecting the payment system, in-
2 cluding the receipt, payment, collection, and
3 clearing of checks, from fraud and abuse by
4 such businesses; and

5 (2) the adequacy of—

6 (A) the activity of the several States in en-
7 forcing the requirements of such statute; and

8 (B) the resources made available to the ap-
9 propriate State agencies for such enforcement
10 activity.

11 (d) REPORT REQUIRED.—Before the end of the 3-year
12 period beginning on the date of the enactment of this Act and
13 by the end of each 1-year period beginning after the end of
14 such period, the Secretary of the Treasury shall submit a
15 report to the Congress containing the findings and recom-
16 mendations of the Secretary in connection with the study
17 under subsection (c), together with such recommendations for
18 legislative and administrative action as the Secretary may
19 determine to be appropriate, including any recommendation
20 pursuant to subsection (e).

21 (e) RECOMMENDATIONS FOR INCENTIVES OR SANC-
22 TIONS IN CASES OF INADEQUATE REGULATION AND EN-
23 FORCEMENT BY STATES.—If the Secretary of the Treasury
24 determines that any State has failed—

1 (1) to enact a statute which meets the require-
2 ments described in subsection (b);

3 (2) to undertake adequate activity to enforce such
4 statute; or

5 (3) to make adequate resources available to the
6 appropriate State agency for such enforcement activity,
7 the report submitted pursuant to subsection (d) shall contain
8 recommendations for legislation establishing incentives which
9 may be provided or sanctions which may be imposed to
10 remedy such failure.

11 SEC. 10. PROVISIONS RELATING TO RECORDKEEPING WITH
12 RESPECT TO CERTAIN INTERNATIONAL FUNDS
13 TRANSFERS.

14 Section 21(b) of the Federal Deposit Insurance Act (12
15 U.S.C. 1829b(b)) is amended—

16 (1) by striking “(b) Where” and inserting “(b)(1)
17 Where”; and

18 (2) by adding at the end the following new
19 paragraph:

20 “(2) FUNDS TRANSFERS.—

21 “(A) IN GENERAL.—Before January 1,
22 1991, the Secretary, after consultation with the
23 Board of Governors of the Federal Reserve
24 System, shall prescribe such final regulations as
25 may be appropriate to ensure that insured deposi-

1 tory institutions maintain such records of payment
2 orders which—

3 “(i) involve international transactions;
4 and

5 “(ii) direct transfers of funds over
6 wholesale funds transfer systems or on the
7 books of any insured depository institution,
8 as will have a high degree of usefulness in crimi-
9 nal, tax, or regulatory investigations or pro-
10 ceedings.

11 “(B) FACTORS FOR CONSIDERATION.—In
12 prescribing the regulations required under sub-
13 paragraph (A), the Secretary shall consider—

14 “(i) the usefulness in criminal, tax, or
15 regulatory investigations or proceedings of
16 any record required to be maintained pursu-
17 ant to the proposed regulations; and

18 “(ii) the effect the recordkeeping re-
19 quired pursuant to such proposed regulations
20 will have on the cost and efficiency of the
21 payment system.

22 “(C) AVAILABILITY OF RECORDS.—Any
23 records required to be maintained pursuant to the
24 regulations prescribed under subparagraph (A)

1 shall be submitted or made available to the Secre-
2 tary upon request.”.

3 SEC. 11. CLARIFICATION OF SECRETARY'S AUTHORITY RELAT-
4 ING TO CONFIDENTIALITY OF TARGETING
5 ORDERS.

6 Section 5326(a) of title 31, United States Code, is
7 amended—

8 (1) in paragraph (2), by striking “and” after the
9 semicolon;

10 (2) in paragraph (3), by striking the period and in-
11 serting “; and”; and

12 (3) by adding at the end the following new para-
13 graph:

14 “(4) to not disclose to any person the existence of,
15 or any provision or term of, any order issued pursuant
16 to this subsection.”.

17 SEC. 12. RIGHT TO FINANCIAL PRIVACY ACT AMENDMENT.

18 The last sentence of section 1103(c) of the Right to Fi-
19 nancial Privacy Act (12 U.S.C. 3403(c)) is amended—

20 (1) by inserting “in good faith” after “disclosure
21 of information”;

22 (2) by striking “or” after “such disclosure” and
23 inserting a comma; and

1 (3) by inserting before the period the following:
2 “, or for a refusal to do business with that customer after
3 having made such disclosure”.

4 SEC. 13. AMENDMENTS RELATING TO EXEMPTIONS FROM
5 CASH TRANSACTION REPORTING REQUIRE-
6 MENTS.

7 Section 5318(f) of title 31, United States Code, is
8 amended to read as follows:

9 “(f) REQUIREMENTS RELATING TO EXEMPTIONS
10 UNDER SUBSECTION (a)(5).—

11 “(1) WRITTEN AND SIGNED STATEMENT RE-
12 QUIRED.—No person shall qualify for an exemption
13 under subsection (a)(5) unless—

14 “(A) the relevant financial institution pre-
15 pares and maintains a written statement which
16 describes in detail the basis for the determination
17 by the institution that such person is qualified for
18 such exemption, including the facts relied upon by
19 the institution in making such determination; and

20 “(B) the person (or, in the case of a person
21 which is not an individual, a senior executive offi-
22 cer (as defined by regulation which the Secretary
23 of the Treasury shall prescribe) of such person)
24 submits to the institution, after reviewing the
25 statement of facts prepared by the institution pur-

1 (3) by inserting after the 2d sentence the follow-
2 ing new sentence: "The Secretary may require reports
3 on the use of such information by any agency only to
4 the extent necessary to ensure that the information is
5 used for the purposes referred to in the preceding
6 sentence."

7 SEC. 15. REPORTS ON USES MADE OF CURRENCY TRANSAC-
8 TION REPORTS.

9 (a) REPORT TO CONGRESS ON USE OF TRANSACTION
10 REPORTS.—Before the end of the 180-day period beginning
11 on the date of the enactment of this Act and by the end of the
12 1st 3 1-year periods beginning after the end of such period,
13 the Secretary of the Treasury shall submit a report to the
14 Congress containing the following information:

15 (1) The number of each type of report filed with
16 the Secretary pursuant to subchapter II of chapter 53
17 of title 31, United States Code (or any regulation pre-
18 scribed or order issued pursuant to such subchapter)
19 during the preceding fiscal year.

20 (2) The number of reports filed with the Secretary
21 pursuant to section 6050I of the Internal Revenue
22 Code of 1986 (relating to transactions involving cur-
23 rency) during the preceding fiscal year.

1 (3) The Secretary's estimate of the rate of compli-
2 ance with the reporting requirements by persons re-
3 quired to file reports described in paragraph (1) or (2).

4 (4) The manner in which the Department of the
5 Treasury and other agencies and departments of the
6 United States collect, organize, analyze and use the re-
7 ports described in paragraphs (1) and (2)—

8 (A) to support investigations and prosecu-
9 tions of violations of the criminal laws of the
10 United States;

11 (B) to support investigations and prosecutions
12 of violations of the laws of foreign countries; and

13 (C) to support civil enforcement of the laws
14 of the United States, including provisions relating
15 to asset forfeiture.

16 (5) A summary of actions commenced and sanc-
17 tions imposed during the preceding fiscal year against
18 persons who failed to file any report described in para-
19 graph (1) or (2) and any other step taken by the Secre-
20 tary to ensure maximum compliance with the reporting
21 requirements referred to in such paragraphs.

22 (6) A summary of criminal indictments or informa-
23 tions filed during the preceding fiscal year which were
24 the result, in large part, of investigations which were

1 initiated on the basis of any analysis of any report de-
2 scribed in paragraph (1) or (2).

3 (7) A summary of criminal indictments or informa-
4 tions filed during the preceding fiscal year which were
5 the result, in large part, of investigations which were
6 initiated on the basis of information relating to suspi-
7 cious financial transactions provided voluntarily by fi-
8 nancial institutions (as defined in section 5312(a)(2) of
9 title 31, United States Code).

10 (b) ADVISORY GROUP ON REPORTING REQUIRE-
11 MENTS.—

12 (1) ESTABLISHMENT.—Not later than 90 days
13 after the date of the enactment of this Act, the Secre-
14 tary shall establish an Advisory Group on Reports on
15 Monetary Instruments Transactions consisting of repre-
16 sentatives of the Department of the Treasury and of fi-
17 nancial institutions and other persons subject to the re-
18 porting requirements referred to in paragraphs (1) and
19 (2) of subsection (a).

20 (2) PURPOSES.— The Advisory Group shall pro-
21 vide a means by which the Secretary—

22 (A) informs private sector representatives, on
23 a regular basis, of the ways in which the reports
24 referred to in paragraphs (1) and (2) of subsection

1 (a) have been used for the purposes described in
2 subsection (a)(4);

3 (B) informs private sector representatives, on
4 a regular basis, of how information regarding sus-
5 picious financial transactions provided voluntarily
6 by financial institutions has been used for the pur-
7 pose described in subsection (a)(4); and

8 (C) receives advice on the manner in which
9 the reporting requirements referred to in para-
10 graphs (1) and (2) of subsection (a) should be
11 modified to enhance the ability of law enforcement
12 agencies to use the information provided for law
13 enforcement purposes.

14 (3) **INAPPLICABILITY OF FEDERAL ADVISORY**
15 **COMMITTEE ACT.**—The Federal Advisory Committee
16 Act shall not apply to the Advisory Group on Reports
17 on Monetary Instruments Transactions established pur-
18 suant to paragraph (1).

19 **SEC. 16. INFORMATION FROM CURRENCY SURPLUS REPORTS**
20 **REQUIRED TO BE PROVIDED TO THE ATTOR-**
21 **NEY GENERAL AND THE SECRETARY OF THE**
22 **TREASURY.**

23 At the request of the Attorney General of the United
24 States, the Board of Governors of the Federal Reserve
25 System shall provide any information and data contained in

1 or related to the cash surplus reports of the Federal Reserve
2 banks (relating to currency held by each such bank and de-
3 pository institutions within the Federal Reserve bank dis-
4 tricts) which may be relevant or useful for detecting viola-
5 tions of money laundering, recordkeeping, and reporting re-
6 quirements to the Attorney General and the Secretary of the
7 Treasury.

8 SEC. 17. STUDY OF METHODS FOR TRACING FEDERAL RE-
9 SERVE NOTES.

10 (a) IN GENERAL.—

11 (1) ESTABLISHMENT.—Before the end of the 30-
12 day period beginning on the date of the enactment of
13 this section, the Secretary of the Treasury shall estab-
14 lish a study group composed as follows:

15 (A) The Assistant Secretary of the Treasury
16 for enforcement (who shall serve as the chairper-
17 son of the group).

18 (B) The Director of the Bureau of Engraving
19 and Printing in the Department of the Treasury.

20 (C) At least 1 member appointed by the Sec-
21 retary from each of the following communities
22 who are recognized experts in the area of elec-
23 tronic scanning:

24 (i) The Federal Reserve System.

25 (ii) The scientific community.

1 (iii) Private industry.

2 (D) Such additional number of members as
3 the Secretary determines to be appropriate who
4 shall be appointed by the Secretary from among
5 individuals who are specially qualified to serve on
6 the study group by virtue of their education,
7 training, or experience.

8 (2) DUTIES OF THE STUDY GROUP.—The study
9 group established pursuant to paragraph (1) shall—

10 (A) survey methods and technologies that
11 may be used in the printing of Federal Reserve
12 notes in denominations of \$10 or more to make
13 such notes traceable by an electronic scanning
14 device (including Federal Reserve notes in circu-
15 lation on such date of enactment);

16 (B) assess and evaluate the cost of imple-
17 menting the methods and technologies surveyed
18 and the amount of time needed to implement each
19 such method or technology; and

20 (C) evaluate the extent to which each of the
21 methods and technologies surveyed would protect
22 the right of individuals to privacy in the conduct
23 of financial transactions.

24 (3) TERMS.—

1 (A) IN GENERAL.—Members of the study
2 group shall be appointed for the life of the study
3 group.

4 (B) VACANCY.—Any vacancy on the study
5 group shall be filled in the manner in which the
6 original appointment was made.

7 (C) ACTING OFFICIALS MAY SERVE.—In the
8 event of a vacancy in any office described in sub-
9 paragraph (A) or (B) of paragraph (1), any indi-
10 vidual serving in such office in an acting capacity
11 shall be a member of the study group while serv-
12 ing in such capacity.

13 (4) BASIC PAY AND EXPENSES.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), members of the study group
16 shall each be entitled to be paid at a rate deter-
17 mined by the Secretary of the Treasury for each
18 day (including travel time) during which they are
19 engaged in the actual performance of duties
20 vested in the study group, except that such rate
21 may not exceed the daily equivalent of the maxi-
22 mum annual rate of basic pay in effect for grade
23 GS-18 of the General Schedule.

24 (B) NO ADDITIONAL COMPENSATION FOR
25 FEDERAL EMPLOYEES.—Members of the study

1 group who are full-time officers or employees of
2 the United States shall receive no additional pay
3 by reason of their service on the study group.

4 (C) EXPENSES.—Members of the study
5 group may be allowed travel expenses, including
6 per diem in lieu of subsistence, while away from
7 their homes or regular places of business on the
8 business of the study group in accordance with
9 section 5703 of title 5, United States Code.

10 (5) ADMINISTRATIVE SUPPORT.—The Secretary
11 of the Treasury shall provide the study group with
12 such administrative support services, including a meet-
13 ing room, as the Secretary determines is appropriate in
14 order for the study group to carry out the requirements
15 of this section.

16 (6) TERMINATION.—Upon issuance of the report
17 by the Secretary of the Treasury under subsection (b),
18 the study group shall cease to exist.

19 (7) INAPPLICABILITY OF FEDERAL ADVISORY
20 COMMITTEE ACT.—The provisions of the Federal Ad-
21 visory Committee Act shall not apply with respect to
22 the study group.

23 (b) REPORT TO CONGRESS.—Before the end of the
24 180-day period beginning on the date of the enactment of this
25 section, the Secretary of the Treasury shall submit a report

1 to the Congress containing a summary of the findings and
2 recommendations of the study group under subsection (a)(1),
3 together with such recommendations for administrative or
4 legislative action as the Secretary may determine to be
5 appropriate.

6 SEC. 18. GAO FEASIBILITY STUDY OF THE FINANCIAL CRIMES
7 ENFORCEMENT NETWORK.

8 (a) STUDY REQUIRED.—The Comptroller General of
9 the United States shall conduct a feasibility study of the Fi-
10 nancial Crimes Enforcement Network (popularly referred to
11 as "Fincen") proposed to be established by the Secretary of
12 the Treasury in cooperation with other agencies and depart-
13 ments of the United States and appropriate Federal banking
14 agencies.

15 (b) SPECIFIC REQUIREMENTS.—In conducting the
16 study required under subsection (a), the Comptroller General
17 shall examine and evaluate—

18 (1) the extent to which Federal, State, and local
19 governmental and nongovernmental organizations are
20 voluntarily providing information which is necessary for
21 the system to be useful for law enforcement purposes;

22 (2) the extent to which the operational guidelines
23 established for the system provide for the coordinated
24 and efficient entry of information into, and withdrawal
25 of information from, the system;

1 (3) the extent to which the operating procedures
2 established for the system provide appropriate stand-
3 ards or guidelines for determining—

4 (A) who is to be given access to the informa-
5 tion in the system;

6 (B) what limits are to be imposed on the use
7 of such information; and

8 (C) how information about activities or rela-
9 tionships which involve or are closely associated
10 with the exercise of constitutional rights is to be
11 screened out of the system; and

12 (4) the extent to which the operating procedures
13 established for the system provide for the prompt veri-
14 fication of the accuracy and completeness of informa-
15 tion entered into the system and the prompt deletion or
16 correction of inaccurate or incomplete information.

17 (c) REPORT TO CONGRESS.—Before the end of the 1-
18 year period beginning on the date of the enactment of this
19 Act, the Comptroller General of the United States shall
20 submit a report to the Congress containing the findings and
21 conclusions of the Comptroller General in connection with
22 the study conducted pursuant to subsection (a), together with
23 such recommendations for legislative or administrative action
24 as the Comptroller General may determine to be appropriate.

1 SEC. 19. CONGRESSIONAL CHECK CASHING AND DEPOSIT
2 SERVICES SUBJECT TO CASH REPORTING RE-
3 QUIREMENTS.

4 Section 5312(a)(2)(W) of title 31, United States Code, is
5 amended by inserting "(including any office or officer of
6 either House of the Congress who provides check cashing or
7 deposit services for Members of Congress)" after "an agency
8 of the United States Government".

9 SEC. 20. REPORTS ON AMOUNTS AND DENOMINATIONS OF
10 CURRENCY CONFISCATED IN CONNECTION
11 WITH DRUG SEIZURES AND DRUG-RELATED
12 MONEY LAUNDERING.

13 (a) COLLECTION OF INFORMATION.—

14 (1) IN GENERAL.—The Secretary of the Treasury
15 shall collect and maintain information on—

16 (A) the total dollar amount of Federal Re-
17 serve notes (and any other currency) which are
18 confiscated by law enforcement agents in connec-
19 tion with the seizure of any controlled substance
20 or any enforcement action with regard to a drug-
21 related money laundering operation; and

22 (B) the total dollar amount of each denomi-
23 nation of such notes and other currency.

24 (2) INFORMATION PROVIDED BY OTHER AGEN-
25 CIES.—In the case of any confiscation described in
26 paragraph (1) by any Federal law enforcement agents

1 who are not employed within the Department of the
2 Treasury, the head of the department or agency in
3 which such agents are employed shall promptly provide
4 the information referred to in such paragraph to the
5 Secretary of the Treasury.

6 (b) PLAN FOR COLLECTION OF INFORMATION FROM
7 STATE AND LOCAL AGENCIES.—

8 (1) IN GENERAL.—The Secretary of the Treasury
9 shall develop a plan for obtaining from appropriate
10 agencies and departments of State and local govern-
11 ments information on the amounts and the denomina-
12 tions of Federal Reserve notes (and any other curren-
13 cy) which are confiscated by State or local law en-
14 forcement agents in connection with the seizure of any
15 controlled substance or any enforcement action with
16 regard to a drug-related money laundering operation.

17 (2) REPORT.—Before the end of the 90-day
18 period beginning on the date of the enactment of this
19 Act, the Secretary of the Treasury shall submit a
20 report to the Congress on the plan developed pursuant
21 to paragraph (1), including such recommendations for
22 legislative or administrative action as the Secretary de-
23 termines to be necessary to implement the plan.

24 (c) PERIODIC REPORTS ON COLLECTED INFORMA-
25 TION.—The Secretary of the Treasury shall submit a report

1 to the Congress containing a summary of the information col-
2 lected and maintained by the Secretary under this section at
3 the end of each 6-month period beginning after the date of
4 the enactment of this Act.

5 (d) REPORT ON NEED FOR ADDITIONAL INFORMA-
6 TION.—Before the end of the 90-day period beginning on the
7 date of the enactment of this Act, the Secretary of the Treas-
8 ury shall submit a report to the Congress on what other in-
9 formation (in addition to the information maintained pursuant
10 to subsection (a)) would be needed in order to determine—

11 (1) whether Federal Reserve notes in denomina-
12 tions of \$50 and \$100 are used primarily for drug traf-
13 ficking and other illegal activities; and

14 (2) the feasibility of withdrawing Federal Reserve
15 notes in denominations of \$50 and \$100 from circula-
16 tion and the deterrent effect such withdrawal would
17 have on drug trafficking and other illegal activities.

Passed the House of Representatives April 25, 1990.

Attest: DONNALD K. ANDERSON,

Clerk.

The CHAIRMAN. Thank you, Senator Kerry, for the important points you have just made.

Before we start, I have statements from Senators Sasser and Graham to be inserted in the record.

STATEMENT OF SENATOR JIM SASSER

Senator SASSER. Mr. Chairman, the topic for discussion today is both timely and troubling. I commend my colleague from Massachusetts for his conscientious and dedicated work in this key banking area and for drafting this bill we are discussing today. As we have created new ways to detect large flows of cash resulting from illegal activities, the cash flows have shifted. Yet, law enforcement officials agree that detection of illegal cash flows is paramount to detection of illegal activities.

The drug trade accounts for hundreds of millions of dollars in profits. The easy money that results from drug trafficking is the incentive that lures our youth into the dangerous web of the drug trade. We must remove the profit motivation if we are to stop the plague of drugs in our society. We must put an end to the ability of dealers to disguise and transfer their immense profits.

Senator Kerry's bill gives regulators an even bigger stick to swing at banks convicted of money laundering. Even though there are now substantial penalties for this type of activity, the profits to be made on processing large amounts of illicit cash could discount the penalties currently available. The power to revoke the charter of a bank, terminate deposit insurance or remove parties who participated in drug laundering activity will certainly reduce the incentive to participate in this type of activity.

It's appropriate that we look at this issue now. It is an integral piece of the puzzle of eradicating the tragedy of drugs from our society. I look forward to the insights of our witnesses on this legislation and the effective role it could play in putting a stop to money laundering.

STATEMENT OF SENATOR BOB GRAHAM

Senator GRAHAM. Good morning, Mr. Chairman. This morning's hearing gives us the opportunity to learn from those financial institutions and Federal agencies that will be most effected by the proposed money laundering legislation in the Senate and the House. I look forward to hearing their views, although it appears from their testimony that—beyond some minor changes—the majority of the witnesses are endorsing both Senator Kerry's and Senator D'Amato's bills.

I would like to take this opportunity to commend Senator Kerry and Senator D'Amato for their work in toughening money laundering laws. It is my intention to support both of these bills, but I would like to first share with the Senators some suggestions from the banking and regulatory community in Florida. These suggested changes will, I believe, increase the information sharing between the State and the Federal agencies, as well as promote cooperation between the financial institutions and regulators.

The event that spawned many of the legislative proposals we will discuss today, the BCCI money laundering conviction, took place in

Florida. It is Florida's unfortunate distinction to be both a drug trade center and a drug money laundering center. When the committee traveled to Fort Lauderdale in December of last year, we were investigating the special circumstances that have made Florida the target of dealers seeking to launder their proceeds. We discovered that Florida regulators and bankers have made tremendous progress in fighting money laundering—many times leading the Nation in new investigative techniques. Our hearing also turned up further need for cooperation among the Federal agencies, a lack of information sharing between Federal and State regulators, and a need for the Federal Government to recognize how far most banks have come, and are willing to go, to prove they are willing partners in fighting money laundering. This hearing helped us formulate the suggested changes I refer to above.

Mr. Chairman, before I end my statement, I want to stress the importance of taking the profit out of drug dealing by relating the contents of a phone conversation my staff had very recently. The caller was a former cocaine dealer, newly reformed. He left the business because, as the father of two young daughters, he could no longer stomach the immorality of his trade. His call was made out of frustration—he wanted to let us know that:

No. 1, despite our "drug war," cocaine was plentiful, and cheaper than ever, cheaper, in fact, than at any point in his career as a drug dealer;

No. 2, that his former "business partners" were not deterred by tougher sentencing laws or beefed up investigative abilities—they would serve only a limited amount of time in our overcrowded prisons even if they were caught; and

No. 3, that the only possible deterrence measure that he saw as viable is to deprive the drug dealers of their profits. The money, he contended, was too easy and plentiful for dealers to pass up no matter what the consequences. He emphatically stressed that the absolute certainty of losing their boats, their homes, their cars, and their cash was the only way to get dealers to quit dealing.

That's a telling message. I commend the committee, the regulators, the law enforcement officers, and the bankers who have helped us thus far in our money laundering efforts. We need to continue to work together in order to make the drug dealers fear, with "absolute certainty" that they will lose everything they gained from selling drugs.

The CHAIRMAN. Let me now call our first panel to the table and welcome them:

Mr. Peter Nunez, the Assistant Secretary for Enforcement of the Department of the Treasury; Mr. Arthur Beamon, the Assistant General Counsel for Compliance and Enforcement of the FDIC; and Clyde Farnsworth, Jr., the Director of the Federal Reserve Bank Operations for the Federal Reserve System.

Gentlemen, we welcome you and your associates who are with you today. We will make your formal statements a part of the record. We would like to go right down the table and have you each give us a summary of your comments on these legislative initiatives.

We will start with you, Mr. Nunez.

STATEMENT OF PETER K. NUNEZ, ASSISTANT SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. NUNEZ. Thank you, Mr. Chairman, members of the committee:

I would like to thank you for this opportunity to testify about a number of legislative proposals you are considering in the area of money laundering and Bank Secrecy Act enforcement, S. 2327, H.R. 3848, and Senator D'Amato's Anti-Money Laundering Bill.

The Assistant Secretary for Enforcement has Government-wide responsibility for Bank Secrecy Act enforcement and for coordinating policies affecting Treasury investigatory responsibility for the crime of money laundering. FinCEN, the Financial Crimes Enforcement Network, and the Office of Financial Enforcement report to my office. FinCEN has been established within Treasury, at Secretary Brady's initiative, to provide a multi-source data access and financial analysis service to Federal, State, local, and foreign law enforcement to assist in the investigation and prosecution of money laundering and other crimes.

The reporting and recordkeeping requirements of the Bank Secrecy Act assist in identifying criminal organizations by creating a paper trail to trace money back to illegal sources of funds. The currency reporting system has become an essential component of the U.S. financial enforcement program against money laundering, tax evasion, and other criminal activity.

It is relied upon by law enforcement agencies, not just to target suspicious activity, but to support ongoing investigations, prosecutions, and forfeiture actions in a variety of ways.

Within my office, the Office of Financial Enforcement is responsible for Bank Secrecy Act enforcement and compliance, including the promulgation of regulations and administrative rulings, the assessment of civil penalties, and international law enforcement initiatives aimed at combatting money laundering, and monitoring a series of delegations to IRS and to the regulatory agencies which examine the various types of financial institutions subject to the Bank Secrecy Act.

Now I would like to turn to the bills under consideration by this committee. First, both S. 2327 and H.R. 3848, provide that banks convicted of money laundering or Bank Secrecy Act violations could forfeit their national charters or lose their Federal Deposit Insurance, following a hearing.

We agree that, in egregious cases where banks have in effect become criminal enterprises, banks convicted of money laundering should be closed. The Treasury Department does not oppose either bill. However, we prefer the simpler formulation provided in the Senate bill. We think it is appropriate that there be a hearing whenever a bank is convicted of money laundering.

The factors to be considered prior to revocation in the Senate bill are fair. They balance both law enforcement and the economic considerations involved.

Both bills specifically provide for removal and industry-wide bar for institution-affiliated parties who commit money laundering or

Bank Secrecy Act violations. In my written statement, we have suggested possible improvements to the removal provisions.

With respect to Senator D'Amato's money laundering bill and H.R. 3848, both address the problem of money laundering through businesses such as foreign currency exchanges, issuers and redeemers of travelers's checks, check cashers, and transmitters of funds. These institutions are among which Treasury refers to as the "miscellaneous" or "nonbank" financial institutions subject to the Bank Secrecy Act recordkeeping and reporting requirements.

I would like to thank Senator D'Amato and his staff, particularly Morgan Hardman, for working with Treasury to address Treasury's concerns with regard to these money laundering and nonbank financial institution matters.

It is undisputed that as Bank Secrecy Act compliance by banks has improved, drug money launderers have and will continue to turn to these institutions. It is also clear that compliance by these institutions with Bank Secrecy Act and anti-money laundering measures generally is poor. The IRS has an enormously difficult job in examining these institutions for Bank Secrecy Act compliance, given the sheer number of institutions, the fact that the industries are largely unregulated, and that many of the institutions operate illegally under the guise of front businesses such as travel agencies.

The Treasury Department provided drafting assistance on section 2 in Senator D'Amato's bill, which is aimed at identifying the universe of these miscellaneous financial institutions, and particularly those which are operating illegally.

This section adds a new provision to the Bank Secrecy Act to provide that the Secretary issue final regulations by July 1, 1991, requiring that depository institutions identify their customers which are nonbank financial institutions subject to the reporting and recordkeeping requirements of the Bank Secrecy Act, and report the names of the customers to Treasury.

It is anticipated that, as part of the regulations, Treasury would issue guidance on how to identify these institutions, including model "know your customer" procedures. Banks applying sound know your customer procedures are in the best position to determine which customers are financial institutions.

We think this provision has enormous potential utility for law enforcement. Treasury would use the list for a number of investigative and analytical purposes. We would, for instance, be able to communicate directly with the institutions on anti-money laundering procedures and on regulatory initiatives under the Bank Secrecy Act.

Finally, in cases against those institutions under the BSA, the institutions would not be able to argue that they had no knowledge of the requirements. Bank Secrecy Act requirements and IRS compliance review alone, however, cannot turn around the problem of money laundering through miscellaneous institutions. What is needed is State licensing and regulation as set forth in section 9 of H.R. 3848, originally introduced by Congressman Saxton.

Senator D'Amato's bill and H.R. 3848 also address the intricate problem of money laundering through the use of international fund transfers. Most of the recent large-scale money laundering investi-

gations such as Operation Polar Cap and Chase have involved the use of international wire fund transfers.

Treasury issued a Bank Secrecy Act advance notice of proposed rulemaking last fall asking for comments on a number of possible proposals. We have analyzed those written comments, met with a number of banking organizations, law enforcement, and bank regulatory agencies, including the Federal Reserve, and have drafted a proposed regulation which is in the initial Treasury clearance process.

We will consult with Justice and Treasury enforcement bureaus and the bank supervisory agencies, particularly the Federal Reserve Board, prior to publication of a notice of proposed rulemaking. We anticipate publication of a proposed notice with a 60-day comment period this July.

Consequently, we have no problem with the provisions in H.R. 3848 and Senator D'Amato's bill which require Treasury to have final regulations relating to records maintained on international fund transfers by January 1 of next year.

There are other provisions in Senator D'Amato's bill that I would like to discuss briefly.

First of all, the bill contains a number of measures which Treasury believes are necessary to fight against money laundering. The bill extends for 2 years the life of the amendment to the IRS disclosure statute that allows currency reports filed by nonfinancial institution trades and businesses under 26 U.S.C. 6050 to be shared with Federal law enforcement. Without this exception, these reports would be unavailable to law enforcement for analysis except for tax enforcement purposes.

The bill also makes an important amendment to Treasury's Bank Secrecy Act authority. Currently the Secretary of the Treasury has authority to issue procedures to ensure compliance with the requirements of the Bank Secrecy Act. This amendment would eliminate the requirement that the procedures must be linked to a requirement under the BSA.

The bill extends this authority to allow promulgation of procedures geared at "guarding against money laundering" generally, whether or not currency is involved. Specifically, we contemplate that this authority would be used by the Secretary to promulgate model know your customer procedures for institutions subject to the BSA. Financial institutions and law enforcement agree that the best way for legitimate financial institutions to ensure that they are not misused by money launderers and other criminals is to establish stringent know your customer procedures, including measures designed to ~~verify the~~ legitimate nature of a customer's business to ensure that account activity is commensurate with that business. This provision also would facilitate implementation of the recommendation of the G-7 Financial Action Task Force with respect to nonbank financial institutions.

An amendment in Senator D'Amato's bill would eliminate the requirement that agencies that come into possession of financial records in accordance with the Right to Financial Privacy Act notify a customer if an agency transfers the records to another agency.

We believe that the transfer notice should be eliminated whenever the records are relevant to a matter within the jurisdiction of the receiving agency, or would be appropriate for analysis by a receiving agency for law enforcement purposes. This amendment is particularly necessary to facilitate the work of FinCEN.

The bill also modifies the right to Financial Privacy Act to provide that it would not apply to a financial institution providing information, including records, relating to a possible Bank Secrecy Act violation by one of its customers.

There is another amendment to the right to Financial Privacy Act included in H.R. 3848, which the administration supports, but which is not currently in the Senate bill. Financial institutions can report in good faith possible violations of law or regulation to Federal authorities without notice to the suspected customer and free from civil liability under the Financial Privacy Act.

Financial institutions have advised us, nevertheless that there is another concern that in some instances may inhibit them reporting such suspicious transactions. They fear that if they sever relations with a customer, they risk liability under the Fair Credit Reporting Act or for breach of contract. However, if they continue relations with the customer, they feel that they may be implicated in subsequent illegal activity. This concern is addressed in H.R. 3848 by extending protection to banks that sever relations with a customer because of activities underlying a suspicious transaction report.

We are concerned with a provision in H.R. 3848, section 14, which would require Treasury to disseminate Bank Secrecy Act information generally to all Federal and State agencies without restriction on further dissemination and without coordination of investigations that may result from the use of that information.

We cannot responsibly provide this sensitive and confidential financial information to all agencies, supervisory and law enforcement, without some reasonable parameters on the use of this information. We would like to work with the committee to make technical revisions to this section to address these concerns.

In closing, I look forward to working with you as these bills proceed to conference to develop the most effective solutions to these problems.

That concludes my prepared remarks. I will be happy to address any questions the committee has.

Thank you, Mr. Chairman.

[The complete prepared statement of Peter K. Nunez follows:]

SUMMARY OF THE STATEMENT OF
THE HONORABLE PETER K. NUNEZ
ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT
UNITED STATES DEPARTMENT OF THE TREASURY
BEFORE THE SENATE COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
MAY 18, 1990

- o The subject of the testimony is Treasury's views on a number of legislative proposals the Committee is considering in the area of money laundering and Bank Secrecy Act enforcement, S. 2327, H.R. 3848, and Senator D'Amato's anti-money laundering bill.
- o The Assistant Secretary for Enforcement has government-wide responsibility for Bank Secrecy Act enforcement and for coordinating policies affecting Treasury investigatory responsibility for the crime of money laundering. Treasury's Financial Crimes Enforcement Network (FinCEN) and office of Financial Enforcement also report directly to the Assistant Secretary for Enforcement.
- o Treasury has delegated responsibility for examination for compliance with the Bank Secrecy Act to the regulatory agencies according to the types of institutions they examine. Compliance responsibility for the various miscellaneous or nonbank financial institutions subject to the Bank Secrecy Act such as transmitters of funds, check cashers, foreign currency brokers, and casinos rests with the IRS Examination Division.

S. 2327 and H.R. 3848 - Charter Revocation Provisions

- o Both S. 2327 and H.R. 3848 provide that banks convicted of money laundering or Bank Secrecy Act violations could forfeit their national charters or lose their federal deposit insurance. Treasury agrees with the objective of these provisions -- to send a loud and clear message to banks and bankers that money laundering and compliance programs that leave institutions vulnerable to money laundering will not be tolerated. We also agree that in egregious cases where banks have, in effect, become criminal enterprises, banks convicted of money laundering should be closed.
- o Treasury Department has no objection to either bill. However, Treasury prefers the simpler formulation of the Senate bill. We think it is appropriate that there be a hearing when a bank is convicted of money laundering. Indictment of an institution for money laundering is not a matter undertaken lightly and conviction of the institution for money laundering

would be indicative of a very serious case. The factors to be considered prior to revocation in the Senate bill are fair, and balance both law enforcement and economic considerations.

Miscellaneous Financial Institutions

- o Both Senator D'Amato's money laundering bill and H.R. 3848 address the problem of money laundering through businesses such as foreign currency exchanges, issuers and redeemers of traveler's checks, check cashers, and transmitters of funds -- the miscellaneous or nonbank financial institutions subject to the Bank Secrecy Act recordkeeping and reporting requirements.
- o The IRS has an enormously difficult job in examining these institutions for BSA compliance, given the sheer number of institutions, the fact that the industries are largely unregulated, and that many of the institutions operate illegally under the guise of front businesses such as travel agencies.
- o Treasury provided drafting assistance for section 2 in Senator D'Amato's bill which is aimed at identifying the universe of miscellaneous financial institutions, and particularly at those which are operating illegally.
- o This provision has enormous potential utility to law enforcement. Treasury would use the lists for a number of investigative and analytical purposes. Treasury would be able to communicate directly with the institutions on anti-money laundering procedures and on regulatory initiatives under the Bank Secrecy Act. Finally, in cases against these institutions under the Bank Secrecy Act, the institutions would not be able to argue that they had no knowledge of the requirements.
- o Treasury believes this provision will have greater benefit and will unearth more institutions which are operating illegally or without the knowledge that they are subject to the Bank Secrecy Act than the provision in an earlier draft of the bill that would have required registration of transmitters of funds with Treasury.

H.R. 3848 - Section 8 and 9

- o Bank Secrecy Act requirements and IRS compliance review alone cannot turn around the problem of money laundering through miscellaneous institutions. What is needed is state licensing and regulation as set forth in section 9 of H.R. 3848, originally introduced by Congressman Saxton.
- o Treasury believes that this is a good proposal that will focus the attention of state governments on this problem, places the

emphasis on state licensing and enforcement where we believe it should be, and will lead to a regulatory system that will complement Treasury's Bank Secrecy Act enforcement program for these institutions.

International Funds Transfers - Senator D'Amato Bill and H.R. 3848

- o Both Senator D'Amato's bill and H.R. 3848 address the intricate problem of money laundering through the use of international funds transfers, particularly by wire.
- o Treasury issued a Bank Secrecy Act Advance Notice of Proposed Rulemaking last fall asking for comments on a number of possible proposals to address the problem. Treasury has analyzed comments received, met with a number of banking organizations, representatives of CHIPS, and with individual banks, law enforcement and bank regulatory agencies, including the Federal Reserve, and have drafted a proposed regulation which is in the initial Treasury clearance process. Treasury anticipates publication of a proposed notice with a sixty-day comment period in July.
- o Consequently, Treasury has no problem with the provisions in H.R. 3848 and Senator D'Amato's bill which require Treasury to have final regulations relating to records maintained on international fund transfers by January 1, 1991.

Other Provisions in Senator D'Amato's Bill

Internal Revenue Code

- o Section 6 would extend for two years the life of two provisions of the Anti-Drug Abuse Act that were enacted with sunset provisions. First, the bill extends an amendment to the IRS disclosure statute (26 U.S.C. 6103) that allows currency reports filed by non-financial institution trades and businesses under 26 U.S.C. 6050I to be shared with federal law enforcement for non-tax enforcement purposes.
- o Second, the bill also extends the authority for IRS to "churn" assets in undercover operations, for instance, money laundering operations such as sting operations where IRS poses as a foreign currency broker. Without this authority, because of certain fiscal restrictions, all money received in an undercover sting business would have to be deposited to the Treasury General Fund and could not be reinvested in the operations.

Bank Secrecy Act Amendments

- o The bill also makes a potentially very important amendment to

Treasury's Bank Secrecy Act authority. Section 3 authorizes the Secretary of the Treasury to promulgate procedures designed to insure that institutions are not used to further money laundering.

- o Treasury contemplates that this authority would be used by the Secretary to promulgate model "know your customer" procedures for institutions subject to the Bank Secrecy Act. This provision also would facilitate implementation of the recommendation of the G-7 Financial Action Task Force.

Right to Financial Privacy Act

- o An amendment in section 7 of Senator D'Amato's bill would eliminate the requirement that agencies that come into possession of financial records in accordance with the Right to Financial Privacy Act (RFPFA) (either after customer notice or pursuant to notice exception) notify a customer if an agency transfers the records to another agency. This amendment is particularly necessary to facilitate the work of FinCEN.
- o Section 7 also adds new subsection to the RFPFA to provide that the RFPFA would not apply to a financial institution providing information that may be relevant to a Bank Secrecy Act violation by a customer.

H.R. 3848 - Section 14

- o Treasury is concerned with a provision in H.R. 3848, section 14, which would require Treasury to disseminate Bank Secrecy Act information generally to all federal and state agencies without restrictions on further dissemination or coordination in investigations that result from use of the information. In recent years, Treasury has sought to expand dissemination to the data by law enforcement at all levels of government. We particularly want to share information with state financial institution supervisory agencies to facilitate their work in which in many cases compliments the Bank Secrecy Act compliance review of federal agencies.
- o Nevertheless, Treasury cannot provide this sensitive and confidential financial information to all agencies, supervisory and law enforcement, without some reasonable parameters on the use of this information and on coordination with federal authorities. Treasury would like to work with the Committee to make technical revisions to this section to address its concerns.

STATEMENT OF
THE HONORABLE PETER K. NUNEZ
ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT
UNITED STATES DEPARTMENT OF THE TREASURY
BEFORE THE SENATE COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
MAY 18, 1990

Introduction

Mr. Chairman and Members of the Committee, I would like to thank you for this opportunity to testify about a number of legislative proposals you are considering in the area of money laundering and Bank Secrecy Act enforcement, S. 2327, H.R. 3848, and Senator D'Amato's anti-money laundering bill.

Before I turn to the business at hand, I would like to introduce myself to the Committee. As you know, I have been the Assistant Secretary of the Treasury since March and this is my first appearance before the Committee.

I am not new, however, to the subject of money laundering and Bank Secrecy Act enforcement. Previously, I served as U.S.

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Attorney for the Southern District of California. My office was very active in money laundering and Bank Secrecy Act enforcement and in drug prosecutions generally. As a U.S. Attorney, I was one of the beneficiaries of the work of this Committee in the 1986 and 1988 Anti-Drug Abuse Acts which enhanced the quality of the information collected under the Bank Secrecy Act, increased the willingness of banks to report suspicious transactions and cooperate with law enforcement, and strengthened our ability to pursue prosecutions under the Bank Secrecy Act.

Role of the Department of the Treasury and the Assistant Secretary for Enforcement

Money laundering is a complex economic crime that demands a thorough understanding of how our financial institutions operate in order to prevent their abuse. Treasury brings to the problem the perspective of a law enforcement agency, a financial institution regulatory agency, and the agency concerned with the overall condition of our domestic and international financial systems.

We understand not only law enforcement concerns, but the necessity to balance law enforcement needs with other legitimate considerations affecting the financial system. Achieving this balance is one of the challenges facing the Administration and Congress as we seek solutions to the problem of money laundering.

Our experience has taught us that progress can only be made against drug trafficking and the money laundering that sustains it through painstaking, sophisticated financial analysis, through which we can uncover the tangled web of financial dealings of drug organizations and then deprive the organizations of their illgotten gains.

The reporting and recordkeeping requirements of the Bank Secrecy Act assist in identifying criminal organizations by creating a paper trail to trace money back to illegal sources of funds. The currency reporting system has become an essential component of the U.S. financial enforcement program against money laundering, tax evasion and other criminal activity. It is relied upon by law enforcement agencies, not just to target suspicious activity, but to support ongoing investigations, prosecutions, and forfeiture actions in a variety of ways.

The Assistant Secretary for Enforcement has government-wide responsibility for Bank Secrecy Act enforcement and for coordinating policies affecting Treasury investigatory responsibility for the crime of money laundering, through the U.S. Customs Service, Internal Revenue Service, U.S. Secret Service, and Bureau of Alcohol, Tobacco and Firearms. Treasury's Financial Crimes Enforcement Network (FinCEN) also reports directly to the Assistant Secretary for Enforcement.

FINCEN, as most of you know, has been established within Treasury at the Secretary's initiative to provide a multi-source data access and financial analysis service to Federal, State, local and foreign law enforcement to assist in the investigation and prosecution of money laundering and other crimes. In performing this analysis function, FINCEN will build on Treasury's experience over the years in analyzing Bank Secrecy Act and other financial data. The Customs unit formerly responsible for Bank Secrecy Act data analysis function has been incorporated into FINCEN.

FINCEN represents an innovative and fresh approach to financial analysis. For the first time, experts from law enforcement, regulatory agencies, and the private sector will work together routinely to apply their collective expertise to the issue of money laundering and other financial crimes. While we welcome sound legislative proposals in this area, we know you will agree that there is no magic fix for the problem of money laundering. The FINCEN approach, however, we believe to be a very major step in the right direction. We hope that any of you or your staffs who would like to learn more about FINCEN would call us and come visit the facility.

Within my office, the Office of Financial Enforcement is responsible for Bank Secrecy Act enforcement and compliance,

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including the promulgation and administrative rulings, the assessment of civil penalties, international law enforcement initiatives aimed at combatting money laundering, and monitoring a series of delegations to IRS and to the regulatory agencies which examine the various types of financial institutions subject to the currency reporting and recordkeeping provisions of the Bank Secrecy Act.

Treasury has delegated responsibility for examination for compliance with the Bank Secrecy Act to the regulatory agencies according to the types of institutions they examine. For instance, the Federal Reserve Board is responsible for state chartered member banks, the FDIC for state chartered banks that are not Federal Reserve members, and the Comptroller of the Currency for national banks. Compliance responsibility for the various miscellaneous or nonbank financial institutions subject to the Bank Secrecy Act such as transmitters of funds, check cashers, foreign currency brokers, and casinos rests with the IRS Examination Division.

S. 2327 and H.R. 3848 - Charter Revocation Provisions

Now, I would like to turn to the bills under consideration by this Committee. First, both S. 2327 and H.R. 3848 provide that banks, including saving associations and credit unions, that are convicted of money laundering or Bank Secrecy Act violations

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could forfeit their national charters or lose their federal deposit insurance. We agree with the objective of these provisions -- to send a loud and clear message to banks and bankers that money laundering and compliance programs that leave institutions vulnerable to money laundering will not be tolerated. We also agree that in egregious cases where banks have, in effect, become criminal enterprises, banks convicted of money laundering should be closed. Furthermore, S. 2327 and H.R. 3848 both provide that relevant factors will be considered and procedural safeguards followed to insure that closing is in no way automatic upon conviction.

The House and Senate bills vary in several respects. In S. 2327 the appropriate regulator would be required to conduct a hearing on charter or insurance revocation if a bank was convicted of money laundering and a hearing would be discretionary in cases of bank conviction for Bank Secrecy Act violations. In determining whether to revoke a charter or insurance, the regulator would consider the degree to which senior management was involved, whether the interest of the local community would be threatened by the closing, whether the bank has cooperated with law enforcement in the case, and whether there would be losses to the federal deposit insurance funds.

Under the House bill, if only the bank were convicted of money laundering or Bank Secrecy Act violations, it would be a ground

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for conservatorship, but would not necessarily result in revocation of the charter or insurance. In deciding whether to appoint a conservator, the regulator would take into account the extent to which directors or senior officials were involved, the extent to which the violations occurred despite bank policies and procedures designed to prevent the offense, the extent the bank has cooperated with law enforcement in the case, and the extent to which the bank has instituted internal controls to insure against future money laundering or Bank Secrecy Act violations. If the bank and "directors or senior executive officers" were convicted of either money laundering or Bank Secrecy Act violations, the regulator would be required to conduct a hearing on charter or insurance revocation, as in S. 2327. The factors to be considered for revocation would be the same as for conservatorship. After reviewing the factors the regulator could order revocation only if the "gravity of the offense" outweighed the benefits of continued operation.

The Treasury Department does not oppose either bill. However, we prefer the simpler formulation of the Senate bill. We think it is appropriate that there be a hearing when a bank is convicted of money laundering. Indictment of an institution for money laundering is not a matter undertaken lightly and conviction of the institution for money laundering would be indicative of a very serious case. The factors to be considered prior to revocation in the Senate bill are fair, and balance both law

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enforcement and economic considerations. If the bank satisfies any one of the criteria, the regulator would have the discretion to keep the bank open.

We are also concerned that the House bill can be read to mean that prior to a hearing both the bank and more than one director or more than one senior officer would have to be convicted of money laundering. Arguably, if one director and one senior officer were convicted a hearing would not be required.

Both bills amend the Federal Deposit Insurance Act to specifically provide for the removal and industry-wide bar for institution affiliated parties who commit money laundering or Bank Secrecy Act violations. The House version simply adds a new basis for removal in 12 U.S.C. 1818(e). The fact of a conviction alone would be an independent basis for removal.

In addition, there should be an amendment 1818(g)(1) to allow the agency, on a permissive basis, to bar someone from banking pending the trial based on an indictment of a money laundering or Bank Secrecy Act offense without the necessity of showing that the crime is a breach of trust or breach of a fiduciary duty or a threat to the institution or that public confidence would be called into question, as is generally required for a post indictment suspension.

There should also be an amendment 1818(e) to indicate that the sole criterion for removal and for barring someone administratively from banking could be that he violated the Bank Secrecy Act or money laundering statutes.

In addition, we would suggest that money laundering and Bank Secrecy Act violations also should be specifically referenced in 12 U.S.C. 1829 which provides for a criminal penalty if persons who have been convicted of a criminal offense involving dishonesty or breach of trust participate in the conduct of the affairs of a financial institution. Penalties can be applied both against the previously convicted person and the financial institution that permits the participation.

Miscellaneous Financial Institutions

Senator D'Amato's Bill

Both Senator D'Amato's money laundering bill and H.R. 3848 address the problem of money laundering through businesses such as foreign currency exchanges, issuers and redeemers of traveler's checks, check cashers, and transmitters of funds. These institutions are among what Treasury refers to as the miscellaneous or nonbank financial institutions subject to the Bank Secrecy Act recordkeeping and reporting requirements.

It is undisputed that as Bank Secrecy Act compliance by banks has improved, drug money launderers have and will continue to turn to these institutions to convert street currency into monetary instruments and even to transmit abroad the proceeds of drug sales. Like banks, these institutions provide the services essential at the initial placement stage of money laundering -- conversion of bulky street currency into more portable monetary instruments, such as money orders and traveler's checks, which can be more easily deposited or mailed or shipped abroad without detection. It also is clear that compliance by these institutions with the Bank Secrecy Act and with anti-money laundering measures generally is poor.

The IRS has an enormously difficult job in examining these institutions for Bank Secrecy Act compliance, given the sheer number of institutions, the fact that the industries are largely unregulated, and that many of the institutions operate illegally under the guise of front businesses such as travel agencies.

Treasury provided drafting assistance for section 2 in Senator D'Amato's bill which is aimed at identifying the universe of miscellaneous financial institutions, and particularly at those which are operating illegally. This section adds a new provision to the Bank Secrecy Act to provide that the Secretary issue final regulations by July 1, 1991 requiring that depository

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institutions -- banks, savings associations, and credit unions -- identify their customers which are nonbank financial institutions subject to the reporting and recordkeeping requirements of the Bank Secrecy Act, and to report the names of those customers to Treasury.

In states that do regulate these institutions, such as New York, state regulators have a problem with large numbers of unlicensed institutions, many of which have been involved in money laundering schemes. Therefore, the bill also provides that the Secretary will provide the list to appropriate state supervisory agencies for supervisory purposes.

It is anticipated that as part of the regulations, Treasury would issue guidance on how to identify these institutions, including model "know your customer" procedures. Banks applying sound know your customer procedures are in the best position to determine which of their customers may be operating as miscellaneous financial institutions. If the bank followed the Treasury guidance and reasonably relied on a misrepresentation by its customer, it would not be liable.

A new daily civil penalty is proposed for persons including nonbank financial institutions and their officers, directors and employees who misrepresent the nature of their businesses to

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depository institutions. The criminal provisions in 31 U.S.C. 5322 also would apply.

This provision has enormous potential utility to law enforcement. Treasury would use the lists for a number of investigative and analytical purposes. We would be able to communicate directly with the institutions on anti-money laundering procedures and on regulatory initiatives under the Bank Secrecy Act. Finally, in cases against these institutions under the Bank Secrecy Act, the institutions would not be able to argue that they had no knowledge of the requirements.

We believe this provision will have greater benefit and will unearth more institutions which are operating illegally or without the knowledge that they are subject to the Bank Secrecy Act than the provision in an earlier draft of the bill that would have required registration of transmitters of funds with Treasury.

H.R. 3848 - Section 8 and 9

Bank Secrecy Act requirements and IRS compliance review alone cannot turn around the problem of money laundering through miscellaneous institutions. What is needed is state licensing and regulation as set forth in section 9 of H.R. 3848, originally introduced by Congressman Saxton.

Section 9 provides for the development of model state legislation which includes licensing, licensing standards, state penalties for Bank Secrecy Act violations, and criminal penalties for operating without a license. Three years after the date of enactment and three years annually after that, the Secretary of the Treasury would be required to report to Congress concerning progress made in developing a model statute, the adequacy of the activities of the states to enforce such statutes, and the resources made available to the appropriate state agencies for enforcement. The Secretary would make recommendations in this report on incentives for or sanctions against states that had failed to enact and enforce a statute or to apply adequate resources for enforcement.

We agree that, based upon our experience with these institutions, Treasury, perhaps through IRS, would be the appropriate Federal agency to undertake this task. However, with present resource levels, this labor-intensive project may require us to redirect resources otherwise dedicated to reviewing Bank Secrecy Act compliance by these businesses. We have not fully evaluated the potential budgetary impact and potential resource diversion of this project, but they appear significant.

Nevertheless, we believe this is a good proposal that will focus the attention of state governments on this problem, places the

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emphasis on state licensing and enforcement where we believe it should be, and will lead to a regulatory system that will complement Treasury's Bank Secrecy Act enforcement program for these institutions.

H.R. 3848 also contains another provision, section 8, which responds to the problem with miscellaneous financial institutions. It provides that Treasury require that banks in a certain geographic area on a targeted basis obtain copies of CTRs, if any are required, filed by their nonbank financial institution customers, and provide those copies to Treasury. We welcome this new approach to the problem, but can only speculate as to what effect it would have in practice. One effect may be to encourage some institutions to file reports which otherwise would not have to be filed and to give notice to some which may be ignorant of the filing requirements. It may also be helpful in a subsequent case against a nonbank financial institution to establish that it in fact had knowledge of the requirements. Also, it may identify institutions with past noncompliance problems.

International Funds Transfers - Senator D'Amato Bill and
H.R. 3848

Both Senator D'Amato's bill and H.R. 3848 address the intricate problem of money laundering through the use of international

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funds transfers, particularly by wire. Most of the recent large-scale money laundering investigations, such as Operations Polar Cap and C-Chase, have involved the use of international wire fund transfers.

Treasury's challenge is to use our extensive authority with respect to international transactions under the Bank Secrecy Act to develop recordkeeping, and perhaps reporting, requirements which insure that law enforcement has the information it needs both to follow the trail of funds for the successful investigation and prosecution of drug money laundering and other crimes and to identify suspicious funds transfers, even where little or nothing is known about the source of the funds.

As always, our task is complicated by the need to balance law enforcement needs with burdens on financial institutions and the efficient operation of the international payment system. The United States has developed a highly efficient transfer system that is the model for the world and that facilitates the use of the dollar as an international currency and the United States as a banking center. Trillions of dollars pass through this system annually, the vast majority of which represent routine, legitimate commercial transactions. We cannot afford to experiment with this system. We must develop recordkeeping and reporting requirements that will produce the maximum results to

law enforcement without disturbing the reliability or efficiency of the system.

It was with this challenge in mind that we issued a Bank Secrecy Act Advance Notice of Proposed Rulemaking last fall asking for comments on a number of possible proposals to address the problem. We received in excess of 100 detailed responses from financial institutions, and from financial institution trade associations. We have analyzed those written comments, met with a number of banking organizations, representatives of CHIPS, and with individual banks, law enforcement and bank regulatory agencies, including the Federal Reserve, and have drafted a proposed regulation which is in the initial Treasury clearance process. We will consult with Justice and Treasury enforcement bureaus and the bank supervisory agencies, particularly the Federal Reserve Board, prior to publication of a Notice of Proposed Rulemaking. We anticipate publication of a proposed notice with a sixty-day comment period in July.

Consequently, we have no problem with the provisions in H.R. 3848 and Senator D'Amato's bill which require Treasury to have final regulations relating to records maintained on international fund transfers by January 1, 1991. We believe that the regulatory process will result in the most effective measures to address this problem.

Other Provisions in Senator D'Amato's BillInternal Revenue Code

There are a number of other provisions in Senator D'Amato's bill which Treasury believes are necessary to the fight against money laundering.

Section 6 would extend for two years the life of two provisions of the Anti-Drug Abuse Act that were enacted with sunset provisions. First, the bill extends an amendment to the IRS disclosure statute (26 U.S.C. 6103) that allows currency reports filed by non-financial institution trades and businesses under 26 U.S.C. 6050I to be shared with federal law enforcement. Without this exception, these reports would be unavailable to law enforcement for analytical purposes except for tax enforcement purposes. These forms have utility far beyond tax enforcement, comparable to the utility of Currency Transaction Reports, and we believe that they should be accessible on the same basis as information reported under the Bank Secrecy Act. While we support another extension, we believe that this exception to the IRS disclosure statute should be made permanent in the future and expanded to allow access to State, local, and foreign law enforcement.

The bill also extends the authority for IRS to "churn" assets in undercover operations, for instance, money laundering operations such as sting operations where IRS poses as a foreign currency broker. Without this authority, because of certain fiscal restrictions, all money received in an undercover sting business would have to be deposited to the Treasury General Fund and could not be reinvested in the operations. This makes undercover operations cost prohibitive. Other major federal law enforcement agencies have this churning authority on a permanent basis.

Bank Secrecy Act Amendments

The bill also makes a potentially very important amendment to Treasury's Bank Secrecy Act authority. Section 3 authorizes the Secretary of the Treasury to promulgate procedures designed to insure that institutions are not used to further money laundering. Currently, the Secretary of the Treasury has authority to issue procedures to ensure compliance with the requirements of the Bank Secrecy Act and has considered using that authority to require model know your customer procedures designed at insuring compliance with cash reporting under 31 U.S.C. 5313 and compliance with regulations pertaining to transactions with foreign financial agencies under 31 U.S.C. 5314. This amendment would eliminate the requirement that the procedure must be linked to a requirement under the Bank Secrecy

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Act, i.e., it extends the authority to promulgate procedures geared at "guarding against money laundering" generally, whether or not currency is involved. An institution that failed to maintain the procedures would be subject to a daily civil penalty under 31 U.S.C. 5321 and/or to criminal sanctions under 31 U.S.C. 5322.

Specifically, we contemplate that this authority would be used by the Secretary to promulgate model "know your customer" procedures for institutions subject to the Bank Secrecy Act. Financial institutions and law enforcement agree that the best way for legitimate financial institutions to insure that they are not misused by money launderers and other criminals is to establish stringent "know your customer" procedures, including measures designed to verify the legitimate nature of a customer's business and to insure that account activity is commensurate with that business. Many banks have such programs, but the industry standard is not uniformly high. Moreover programs may be deficient and nonexistent in nonbank institutions, such as currency brokers and wire transmitters.

This provision also would facilitate implementation of the recommendation of the G-7 Financial Action Task Force. For instance, the Task Force recommended that anti-money laundering procedures such as compliance programs and the reporting of suspicious transactions be extended beyond banks to miscellaneous

financial institutions and intermediaries. This amendment would enable Treasury to issue regulations requiring miscellaneous institutions subject to the BSA, including securities brokers, transmitters of fund, and foreign currency brokers to have compliance officers, training programs, and audit procedures similar to banks, and to report suspicious transactions.

There is also an amendment in both Senator D'Amato's bill and H.R. 3848 to amend the provision added to the Bank Secrecy Act in the 1988 Anti-Drug Abuse Act (31 U.S.C. 5326) which granted the authority to require financial institutions in a certain geographic location to be subject by order to special reporting requirements, e.g., reporting at a lower dollar threshold for a period of time. This provision was aimed at detecting the practice of "smurfing" to avoid the \$10,000 reporting requirement. The bills add a provision to section 5326 prohibiting financial institutions from disclosing the existence or terms of the order to any person, except as prescribed by the Secretary.

This is an important improvement: In order for geographic targeting orders to be effective, it is imperative that customers of the financial institutions subject to an order not know of the existence or terms of special reporting requirements. If they know, they will quickly move their activities outside the

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targeted area or below the reporting amount and frustrate the purpose of the order.

Right to Financial Privacy Act

An amendment in section 7 of Senator D'Amato's bill would eliminate the requirement that agencies that come into possession of financial records in accordance with the Right to Financial Privacy Act (RFPA) (either after customer notice or pursuant to notice exception) notify a customer if an agency transfers the records to another agency. This requirement is cumbersome and does not serve any legitimate privacy interest. It was modified somewhat in the Anti-Drug Abuse Act of 1988 to allow agencies, including supervisory authorities, to transfer records to the Attorney General without customer notice for use in criminal cases. We believe that the transfer notice should be eliminated whenever the records are relevant to a criminal or civil matter within the investigatory jurisdiction of the receiving agency or would be appropriate for analysis by a receiving agency for law enforcement purposes.

This amendment is particularly necessary to facilitate the work of FinCEN. FinCEN plans not only to analyze financial records, including records subject to the Right to Financial Privacy Act (RFPA), e.g., records received by administrative subpoena, to facilitate investigations and prosecution by non-Treasury

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agencies, but to integrate such records with other available records for further analysis in order to identify new targets for investigation. We are concerned that this further use, independent of the needs of the agency that originally received the records in accordance with the RFPFA, could be considered as a transfer of the records to Treasury necessitating customer notice. We are also concerned whether records subject to the RFPFA could be transferred to FinCEN for analytical purposes as opposed to case specific purposes absent this amendment.

This amendment would also facilitate communication between supervising agencies and various agencies which underwrite or insure mortgages. Regulated financial institutions are frequently involved in the origination, marketing or servicing of GNMA and FNMA-backed mortgage pools. Should a supervisory agency find problems regarding a bank's involvement in this area that should be brought to the attention of either of these agencies, it should be in a position to provide complete and accurate information immediately and without regard to the notification provisions of the RFPFA. The same should be true of referrals to the Department of Labor involving ERISA violations or to any other federal agency where the regulator has identified problems or violations which fall legitimately within the purview of that agency.

Section 7 also adds new subsection 1113(p) to provide that the RFPFA would not apply to a financial institution providing information that may be relevant to a Bank Secrecy Act violation. This is not a change in current law with respect to supervisory agencies' disclosure to Treasury of records relevant to violations of the Bank Secrecy Act by financial institutions. Pursuant to section 1101(6)(H) of the RFPFA, Treasury is a supervisory agency for purposes of Bank Secrecy Act enforcement. Section 1113(b) sets forth that "[n]othing in this chapter [RFPFA] prohibits . . . disclosure to any supervisory agency of financial records or information in the exercise of supervisory, regulatory or monetary functions with respect to a financial institution." Under delegations from Treasury, bank supervisory agencies routinely examine institutions and report to Treasury possible Bank Secrecy Act violations by financial institutions without customer notice. Financial institutions also disclose information and records about their own past noncompliance to Treasury without reference to the RFPFA.

Nevertheless, the amendment would make an improvement to Bank Secrecy Act enforcement. The law is not clear and an amendment to the RFPFA is needed with respect to the situation in which a financial institution wishes to report possible Bank Secrecy Act violations by a customer, i.e., in situations where the bank suspects that a customer has violated 31 U.S.C. 5224, the

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anti-structuring provision. If the bank is not implicated in the possible violation, disclosure to Treasury arguably would not be within the exercise of Treasury's "supervisory functions . . . with respect to a financial institution." In that case, banks only would be able to give Treasury the limited suspicious transaction information allowed by section 1103(c) of the RFPFA without underlying records.

This provision would authorize full disclosure of information within the possession of the financial institution which the institution has reason to believe is relevant to Bank Secrecy Act violations, including copies of relevant documents. The phrase "reason to believe" means reasonable suspicion, and does not rise to the level of probable cause. Disclosure would be made without any notice to the customer, otherwise required by the RFPFA.

The amendment also provides that a financial institution that in good faith discloses information and records relating to a customer violation of the Bank Secrecy Act under proposed 1113(p) also would be protected from civil liability under state law. This is comparable to the protection for financial institutions that make reports of suspicious transactions in accordance with the RFPFA.

There is another amendment to the RFPFA included in H.R. 3848 which the Administration supports, but which is not currently in

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any Senate bill. Since the inception of the Right to Financial Privacy Act, pursuant to an exception in section 1103(a) (12 U.S.C. 3404(c)), financial institutions have been able to report, in good faith, possible violations of law or regulation to federal authorities without notice to the suspected customer and free from civil liability under the RFPA. At the Administration's request in the Anti-Drug Abuse Act of 1986 and 1988, this Committee further clarified this provision to specify what information a financial institution could give regarding the customer and suspicious activity and that the protection preempted any state law requiring notice to the customer. These changes were added to insure that financial institutions would in no way be inhibited from reporting suspected violations, especially money laundering and Bank Secrecy Act reporting violations.

Nevertheless, financial institutions have advised that there is another concern that in some instances complicates their treatment of suspicious transactions. They fear that if they sever relations with a customer, they risk liability under the Fair Credit Reporting Act, 15 U.S.C. 1691, et seq., or for breach of contract. See Ricci v. Key Bancshares of Maine, 768 F.2d 456 (1st Cir. 1985). However, if they continue relations with the customer, they fear that they may be implicated in any illegal activity. In many cases, after a suspicion has been reported, Federal authorities will encourage financial institutions to

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continue dealing with a suspicious customer so his activities may be monitored. Nevertheless, financial institutions should be free to sever relations with the customer based on their suspicions or on information about a customer received from law enforcement. This concern is addressed in H.R. 3848, section 12, by extending the protection of section 1103(c) to banks that sever relations with a customer because of activities underlying a suspicious transaction report.

H.R. 3848 - Section 14

We are concerned with a provision in H.R. 3848, section 14, which would require Treasury to disseminate Bank Secrecy Act information generally to all federal and state agencies without restrictions on further dissemination or coordination in investigations that result from use of the information. In recent years, Treasury has sought to expand dissemination to the data by law enforcement at all levels of government by simplifying our dissemination guidelines. We provide data routinely to the States of California and Arizona with respect to residents and financial institutions in those states and we are considering a similar arrangement with New York. We particularly want to share information with state financial institution supervisory agencies to facilitate their work in which in many cases compliments the Bank Secrecy Act compliance review of federal agencies.

Nevertheless, we cannot responsibly provide this sensitive and confidential financial information to all agencies, supervisory and law enforcement, without some reasonable parameters on the use of this information and on coordination with federal authorities. We would like to work with the Committee to make technical revisions to this section to address our concerns.

In closing, I am encouraged by the willingness of this Committee to tackle the most difficult problem facing law enforcement in the fight against money laundering. I look forward to working with you as these bills proceed to conference to develop the most effective solutions to these problems.

That concludes my prepared remarks. I would be happy to address any questions you may have.

The CHAIRMAN. Thank you, Mr. Nunez. Let me say that I appreciate the constructive tone and content of your testimony. We want to work with the administration on a bipartisan basis, and I think we are getting the foundation in place to get legislation polished up here that we can enact. I know that will be good news for the country, and for my two colleagues, Senator D'Amato and Senator Kerry.

I want to just acknowledge, before going to our next witness, that Senator Metzenbaum had planned to be here today and to make a statement. He was called out of town unexpectedly and will not be here. We will include his statement in the record.

U.S. Senator Howard M.

METZENBAUM

of Ohio

Committees:
Judiciary
Labor and Human Resources
Energy and Natural Resources
Select Committee on Intelligence

Chairmanships:
Subcommittee on Antitrust
Subcommittee on Labor
Subcommittee on Energy
Regulation and Conservation

STATEMENT OF HOWARD M. METZENBAUM
HEARING ON S. 2327

"DEPOSITORY INSTITUTION MONEY LAUNDERING AMENDMENTS OF 1990"
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
MAY 18, 1990 10:00 A.M. 534 DIRKSEN

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU AND THE BANKING COMMITTEE FOR THE OPPORTUNITY TO TESTIFY ON THIS IMPORTANT LEGISLATION. S. 2327 WILL GIVE REGULATORS NEW AND TOUGHER PENALTIES WHICH WILL HELP DETER MONEY LAUNDERING AND STRIKE A SIGNIFICANT BLOW AGAINST DRUG TRAFFICKING IN THE UNITED STATES.

SOME OF YOU MAY WONDER WHY I HAVE TAKEN SUCH AN ACTIVE ROLE IN THE DEVELOPMENT OF THIS BILL. QUITE SIMPLY, I SEE S. 2327 AS A STEP IN THE RIGHT DIRECTION IN OUR FIGHT AGAINST WHITE COLLAR CRIME. THIS BILL APPROPRIATELY FOCUSES ON THE WHITE COLLAR CRIME OF MONEY LAUNDERING AND RECOGNIZES THAT IF YOU WANT TO STOP MONEY LAUNDERING YOU MUST GO AFTER THE WHITE COLLAR CRIMINALS WHO PARTICIPATE IN THE MONEY LAUNDERING SCHEMES.

MONEY LAUNDERING IS AN ESSENTIAL COMPONENT TO THE DRUG TRADE - - THE KEY ELEMENT THAT KEEPS DRUGS FLOWING INTO OUR CITIES, COMMUNITIES AND SCHOOLS. IT ALLOWS DRUG KINGPINS TO CONVERT THE PROCEEDS FROM THEIR ILLEGAL DRUG SALES INTO SEEMINGLY LEGITIMATE AND OFTEN PROFITABLE VENTURES AROUND THE WORLD - - HOTELS, OFFICE BUILDINGS, REAL ESTATE INVESTMENTS, ETC. IT ALLOWS DRUG DEALERS TO FINANCE THE PRODUCTION AND SALE OF EVEN MORE DRUGS TO FURTHER POLLUTE OUR SOCIETY AND JEOPARDIZE THE FUTURE WELL-BEING AND HEALTH OF OUR CITIZENS. DRUG TRAFFICKING GENERATES AN ESTIMATED \$300 BILLION IN ANNUAL CASH TRANSACTIONS.

BECAUSE MONEY LAUNDERING PLAYS SUCH AN ESSENTIAL ROLE IN THE TRAFFICKING OF DRUGS, IT IS NOT SURPRISING THAT THE INSTANCES OF MONEY LAUNDERING ARE ON THE RISE. AS RECENTLY AS LAST MONTH, THE JUSTICE DEPARTMENT ORDERED 173 U.S. BANKS TO TURN OVER RECORDS OF MORE THAN 750 ACCOUNTS THAT OFFICIALS CHARGED HAVE BEEN USED TO LAUNDER HUNDREDS OF MILLIONS OF DOLLARS IN DRUG PROFITS FROM COLUMBIA'S MEDELLIN COCAINE CARTEL. IT IS ESTIMATED THAT OVER \$400 MILLION (ABOUT TWO DAYS WORTH OF DRUGS SALES IN THE UNITED STATES BY TODAY'S STANDARDS)

MOVED THROUGH ACCOUNTS LOCATED IN 22 STATES BETWEEN 1987 AND 1989.

IN MONEY LAUNDERING CONVICTIONS, AS WITH MOST WHITE COLLAR CRIMES, IT IS OFTEN THE INSTITUTION, NOT THE INDIVIDUALS RESPONSIBLE FOR THE SCHEMES, THAT BEAR THE BRUNT OF ANY CRIMINAL SANCTIONS. THESE SANCTIONS AMOUNT TO NOTHING MORE THAN MERE FINES -- FINES THAT EVENTUALLY ARE PASSED ON TO CONSUMERS AS A COST OF DOING BUSINESS. ALL TOO OFTEN INDIVIDUALS WHO SERVE AS THE AGENTS TO ACCOMPLISH THE MONEY LAUNDERING OR OTHER WHITE COLLAR CRIMES DO NOT SUFFER ANY DIRECT PENALTY. CONSEQUENTLY, OFFICERS, DIRECTORS, AND OTHER EMPLOYEES DO NOT MIND TAKING THE RISKS -- THEY HAVE VERY LITTLE, IF ANYTHING, TO LOSE.

TAKE FOR EXAMPLE, THE BANK OF CREDIT OF COMMERCE INTERNATIONAL ("BCCI") CASE. IN THAT CASE, FOUR BANKS WERE INDICTED FOR MONEY LAUNDERING AND CONSPIRACY TO DISTRIBUTE A CONTROLLED SUBSTANCE. TWO OF THE BANKS PLEAD GUILTY TO 29 ACCOUNTS OF MONEY LAUNDERING. UNDER THE PLEA AGREEMENT ACCEPTED BY THE JUSTICE DEPARTMENT IN THAT CASE, BCCI WAS REQUIRED TO FORFEIT OVER \$14 MILLION DOLLARS IN MONEY LAUNDERING PROFITS. WHILE THIS FORFEITURE MAY BE LARGE BASED ON PREVIOUS EXPERIENCE, IT IS AN INSIGNIFICANT AMOUNT FOR BCCI, A MERE DROP IN THE BUCKET. ACCORDING TO THE INDICTMENT, BCCI HOLDINGS CONDUCTS BANKING OPERATIONS IN AT LEAST 70 COUNTRIES, AND IS THE SEVENTH LARGEST PRIVATELY OWNED BANK IN THE WORLD WITH ASSETS OF OVER \$20 BILLION. A \$15 MILLION FINE IS NOTHING MORE THAN "POCKET CHANGE" TO THEM.

AS YOU MIGHT GUESS, IT IS MY BELIEF, ALONG WITH SEVERAL OF MY COLLEAGUES INCLUDING THE DISTINGUISHED SENATOR FROM MASSACHUSETTS, JOHN KERRY OF THIS COMMITTEE, THAT THE PENALTIES IN THE BCCI CASE WERE MUCH TOO LENIENT. THEY WERE NOT COMMENSURATE WITH THE GRAVITY OF THE MONEY LAUNDERING CRIMES. IT IS HARD TO BELIEVE THAT A \$15 MILLION FORFEITURE BY A \$20 BILLION BANK LIKE BCCI IS GOING TO BE MUCH OF A DETERRENT FOR KEEPING OTHER FINANCIAL INSTITUTIONS FROM ENGAGING IN MONEY LAUNDERING ACTIVITIES. A MERE FINE IS NO PUNISHMENT TO A HUGE CORPORATION -- MAYBE A SLAP ON THE WRIST, BUT NOT A SIGNIFICANT OR MEANINGFUL PUNISHMENT.

MY STANCE ON WHITE COLLAR CRIME HAS ALWAYS BEEN CLEAR, WE MUST GO AFTER THOSE INDIVIDUALS WHO ARE RESPONSIBLE FOR THE CRIME -- THE OFFICERS, DIRECTORS AND OTHER EMPLOYEES THAT FACILITATE THE CRIME. THE KERRY/RIGGLE/METZENBAUM MONEY LAUNDERING BILL DOES JUST THAT. IT IS A SIGNIFICANT WEAPON IN OUR FIGHT AGAINST WHITE COLLAR CRIME. IT MAKES IT CLEAR THAT THOSE INVOLVED IN MONEY LAUNDERING SCHEMES WILL BE HELD ACCOUNTABLE FOR THEIR ACTIONS.

FOR THE FIRST TIME, OFFICERS, DIRECTORS, AND OTHER EMPLOYEES STAND TO LOSE MORE THAN THE MONETARY FINES LEVIED AGAINST THE INSTITUTION. NOW, THEY MAY SUFFER A MORE PERSONAL LOSS. THEY MAY LOSE THEIR JOBS -- THEIR PAYCHECKS --- THEIR LIVELIHOOD.

UNDER S. 2327 OFFICERS AND DIRECTORS WILL NOW BE HELD ACCOUNTABLE FOR WHAT GOES ON IN THEIR INSTITUTIONS. THANKS TO THIS BILL, IF IT IS DETERMINED THAT A SENIOR OFFICIAL HAD KNOWLEDGE OF MONEY LAUNDERING ACTIVITIES IN HIS/HER INSTITUTION, THAT OFFICIAL MAY BE REMOVED FROM OFFICE AND BARRED FROM PARTICIPATING IN THE AFFAIRS OF ANY FINANCIAL INSTITUTION IN THE COUNTRY.

IN ADDITION, IF AN EMPLOYEE IS CONVICTED OF MONEY LAUNDERING, THAT EMPLOYEE WILL BE REMOVED FROM OFFICE AND PROHIBITED FROM PARTICIPATING IN THE AFFAIRS OF ANY FINANCIAL INSTITUTION IN THE COUNTRY. IF AN EMPLOYEE IS CHARGED WITH A MONEY LAUNDERING VIOLATION, THE EMPLOYEE MAY BE SUSPENDED FROM OFFICE OR PROHIBITED FROM FURTHER PARTICIPATION IN THE AFFAIRS OF THE INSTITUTION UNTIL THE CHARGE IS DISPOSED OF OR THE SUSPENSION IS TERMINATED BY THE APPROPRIATE REGULATORY AGENCY.

THERE IS NO DOUBT ABOUT IT, THESE NEW MONEY LAUNDERING PENALTIES WILL SEND A CLEAR AND UNMISTAKABLE MESSAGE TO THOSE WHO RUN FINANCIAL INSTITUTIONS THAT MONEY LAUNDERING WILL NOT BE TOLERATED. IF YOU LAUNDER MONEY, OR IF YOU KNOWINGLY ALLOW MONEY LAUNDERING IN YOUR INSTITUTION, YOU MAY LOSE YOUR REAL TICKET. YOU MAY NEVER MAKE ANOTHER DOLLAR IN SALARY AS AN EMPLOYEE OF YOUR INSTITUTION OR ANY OTHER FINANCIAL INSTITUTION IN THIS COUNTRY.

OFFICERS AND DIRECTORS WILL NO LONGER BE PERMITTED TO CLOSE THEIR EYES OR TURN THEIR BACKS ON MONEY LAUNDERING ACTIVITIES. THE DAYS OF THE SO-CALLED INNOCENT BYSTANDER ARE OVER.

MR. CHAIRMAN, I HAVE ACTIVELY PARTICIPATED IN THE DEVELOPMENT OF S.2327 BECAUSE IT IS A WHITE COLLAR CRIME BILL THAT IS CONSISTENT WITH MY VIEW ON WHITE COLLAR CRIME --- WE MUST GO AFTER THOSE INDIVIDUALS WHO ARE RESPONSIBLE FOR THE CRIME. IT IS THE INDIVIDUALS AND NOT THE FACELESS FINANCIAL INSTITUTIONS THAT ACTUALLY ACCOMPLISH THE MONEY LAUNDERING SCHEMES.

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU, SENATORS KERRY AND GARN, AND THE OTHER CO-SPONSORS OF S. 2327 FOR YOUR LEADERSHIP AND COMMITMENT TO STOPPING MONEY LAUNDERING -- A WHITE COLLAR CRIME WITH GLOBAL IMPLICATIONS. IF WE ARE TO BREAK THE BACK OF THE DRUG TRAFFICKING CARTELS, WE MUST CRIPPLE THEIR ABILITY TO LAUNDER THEIR ILLEGAL DRUG MONIES THROUGH OUR BANKING SYSTEM.

THE SUCCESSFUL PASSAGE OF S.2327 WOULD BE A MAJOR STRATEGIC VICTORY IN OUR WAR ON DRUGS AND WHITE COLLAR CRIME, FOR IF WE CAN STOP MONEY LAUNDERING WE WILL HAVE TAKEN AN IMPORTANT STEP TOWARDS STOPPING DRUG TRAFFICKING.

The CHAIRMAN. Now, Mr. Beamon, we will make your full statement a part of the record. We would like your summary comments at this time.

ARTHUR L. BEAMON, ASSISTANT GENERAL COUNSEL FOR COMPLIANCE AND ENFORCEMENT, FEDERAL DEPOSIT INSURANCE CORPORATION, WASHINGTON, DC

Mr. BEAMON. Good morning, Mr. Chairman, and members of the committee.

We appreciate the opportunity to present the FDIC's views on pending money laundering legislation. Before addressing the legislation, I will explain briefly how the FDIC identifies money laundering in State nonmember banks, and what actions we take to refer that activity for criminal or civil prosecution.

The FDIC generally discovers possible money laundering activities either through FDIC examinations or reports of apparent crime that banks submit under the FDIC regulations. Banks must submit these reports to the Internal Revenue Service's criminal investigations division at the same time they are sent to the FDIC.

The IRS evaluates the reports and determines whether civil actions or criminal investigations are appropriate. The FDIC also sends copies of these reports to Treasury's Office of Financial Enforcement so that Treasury can keep track of criminal referrals and conduct an investigation, if necessary.

The FDIC has no specific authority to prosecute criminal actions against banks or individuals who violate the Bank Secrecy Act. The FDIC regulations and enforcement activities focus primarily on ensuring that State nonmember banks have adequate procedures to enable them to comply with the Bank Secrecy Act. Banks that fail to comply can be subjected to formal cease and desist actions and civil money penalties. The FDIC may also terminate insurance of an institution for violations of law.

Now to turn to the legislation. Mr. Chairman, we agree with the goals of S. 2327 and H.R. 3848—namely, that a removal from the banking business can be an appropriate remedy for depository institutions and individuals who engage in money laundering. Thus, we appreciate the initiative taken by members of this committee in introducing this important legislation.

Financial institution regulators could benefit from a grant of more explicit authority to deal with institutions and individuals involved in money laundering. We have a number of recommendations, however, that we believe would provide appropriate flexibility in this area.

First, the formal hearing process is very time-consuming and resource-intensive. Thus, it may not be the most efficient use of resources to require a hearing on the record as is required by S. 2327 every time an insured institution is conducted of criminal money laundering. Such a mandatory hearing seems even more inappropriate for currency and transaction reporting offenses which also trigger an automatic hearing on H.R. 3848 but not on S. 2327.

S. 2327 is a better approach in that it requires a hearing for criminal convictions under title 18, but leaves to the regulator's discretion whether to initiate insurance termination or charter rev-

ocation proceedings for currency transaction reporting offenses under title 31.

But even in the case of title 18 criminal convictions, we believe it would be appropriate to establish a higher or more flexible threshold for a required hearing. S. 2327 requires a hearing upon conviction of an institution, whether or not any officers or directors are convicted. H.R. 3848 would require a hearing any time an institution and two or more senior officials are convicted.

While we favor the House approach in this regard, we believe the threshold should be more flexible than what is now included in either bill. The participation by only two senior officials may be a significant level of involvement in the case of small institutions, but may not be significant enough to mandate a hearing in all instances when a conviction involves a larger institution. Thus, in addition to discretionary hearings in title 31 conviction cases, we would support a higher or preferably more flexible threshold as a trigger for automatic hearings in the case of title 18 convictions.

We strongly favor S. 2327 over H.R. 3848 with respect to the timing of any hearing requirement. H.R. 3848 would require a hearing within 30 days of sending out a notice of a money laundering conviction. S. 2327 contains no such narrow time requirement. S. 2327 provides regulators with the necessary time to build an adequate case that should withstand judicial review.

Another very positive aspect of S. 2327 is the enumerated factors the agencies must consider in deciding whether to terminate insurance or revoke a charter. These factors specifically include: No. 1, whether there will be significant losses to the FDIC or the RTC; and No. 2, whether the interests of the local community in adequate deposit and credit services would be threatened. Neither of these factors are included on the list in H.R. 3848. We urge that they be included in any final money laundering legislation.

In addition to these recommendations, our written statement includes a few other suggestions on the hearing requirements.

With respect to removal of institution-affiliated parties, we agree that individual officers, directors, and other institution-affiliated parties should be removed from office if they engage in money laundering crimes. In this area as well, we prefer S. 2327. In contrast to H.R. 3848, it provides for agency discretion rather than mandating removal and affords individuals the right to a hearing.

We also have been asked to comment on Senator D'Amato's proposed Money Laundering Enforcement Act of 1990.

The FDIC believes that the Right to Financial Privacy Amendments in the bill would establish valuable exceptions removing impediments to the transfer of financial records relevant to possible violations of money laundering statutes which should aid in the detection and prosecution of such offenses.

In conclusion, we support the goals of S. 2327 and H.R. 3848 and welcome additional tools to punish money launderers and remove such individuals from banking. We look forward to working with the committee on the recommendations in our testimony.

Thank you. I will be happy to answer any questions you may have.

[The complete prepared statement of Arthur L. Beamon follows:]

TESTIMONY OF

ARTHUR L. BEAMON
ASSOCIATE GENERAL COUNSEL
COMPLIANCE & ENFORCEMENT SECTION
LEGAL DIVISION
FEDERAL DEPOSIT INSURANCE CORPORATION

ON

MONEY LAUNDERING LEGISLATION

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

10:00 AM
MAY 18, 1990
Room 538, Dirksen Senate Office Building -

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the Federal Deposit Insurance Corporation's views on pending legislation to further curb the practice of money laundering. The FDIC supports the fight to curtail money laundering activities and related crimes. Money laundering is a serious crime against society, and we believe it should be prosecuted to the full extent of the law.

Before addressing the legislation, we will explain briefly to the Committee how the FDIC identifies money laundering in the banks under its supervision and what actions we take to refer that activity for criminal or civil prosecution.

As the primary federal regulator of state nonmember banks, the FDIC generally discovers possible money laundering activities in banks either through FDIC examinations or through the Reports of Apparent Crime that the banks are required to submit under FDIC regulations. Our current instructions for reports relating to money laundering offenses require banks to submit them to the Internal Revenue Service's Criminal Investigation Division at the same time they are sent to us. The IRS is responsible for evaluating the reports and actually determining whether a civil action or a criminal investigation is appropriate under the circumstances. If the IRS decides to conduct a criminal investigation, it frequently calls upon the FDIC to assist in cases involving insured nonmember banks and their directors, officers and employees.

In most instances, the FDIC also sends copies of the Reports of Apparent Crime to Treasury's Office of Financial Enforcement. During 1989, the FDIC forwarded 248 such Reports involving suspicious currency transactions to the Office of Financial Enforcement. The purpose of forwarding the Reports is to enable Treasury to keep track of criminal referrals and to get more involved in an investigation if necessary.

The FDIC has no specific authority to prosecute criminal actions against banks or individuals who violate the Bank Secrecy Act. FDIC regulations and enforcement activities in the money laundering area focus primarily on ensuring that state nonmember banks adopt and maintain adequate procedures to enable them to comply with the Bank Secrecy Act. Banks that fail to comply with FDIC regulations can be subjected to formal cease and desist actions and civil money penalties for those violations. Violations of the law also can be the basis for FDIC termination of the insurance of an insured depository institution. To date, the mere threat of formal action by the FDIC has been sufficient to persuade banks that are not in compliance to comply with FDIC regulations.

Now to turn to the legislation pending before Congress.

Mr. Chairman, we agree with the goals of S. 2327 and H.R. 3848 -- namely, that removal from the banking business can be an

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appropriate remedy for depository institutions and individuals associated with them who engage in money laundering activities. Thus, we applaud you, Senator Kerry and the other members of this Committee who have taken the initiative on this important legislation. Financial institution regulators, including the FDIC, could benefit greatly from a grant of more explicit authority to deal with institutions and individuals involved in money laundering. We have a number of recommendations, however, that we believe would provide appropriate flexibility in strengthening the ability of the FDIC and other regulators covered by the legislation to deal equitably with institutions and their associated persons who are implicated in money laundering schemes.

Insurance Termination/Charter Revocation Hearing

First, we believe it may not be the most efficient use of resources to require a hearing on the record -- as is required by S. 2327 -- every time an insured institution is convicted of criminal money laundering. Such a mandatory hearing in every instance seems even more inappropriate with respect to so-called structuring offenses under Title 31 which also trigger an automatic hearing under H.R. 3848, but not under S. 2327. The formal hearing process is very time consuming for agency staff -- it takes an average of six to nine months from beginning to end -- and it also consumes a considerable amount of resources.

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Thus, we would favor changes to both bills that give regulators a little more flexibility and discretion. We believe S. 2327 is the better approach in that it requires a hearing for criminal convictions under Title 18, but leaves to the regulators' discretion the determination as to whether to initiate deposit insurance termination or charter revocation proceedings in the case of structuring offense convictions under Title 31.

But, even in the case of Title 18 criminal convictions, we believe it would be appropriate to establish a higher threshold for a required hearing than is now contained in either bill. S. 2327 requires a hearing upon the conviction of an institution alone, whether or not any specific officers or directors also are implicated. H.R. 3848 would require a hearing any time an institution and directors or senior executive officers are convicted of any money laundering offense -- effectively requiring a hearing when two or more individuals are involved. While we favor the House approach in this regard, we believe the threshold should be more flexible. The participation by only two senior officials may be a significant level of involvement in the case of small institutions, but may not be significant enough to mandate a hearing in all instances when the conviction involves a larger institution. Thus, in addition to discretionary hearings in Title 31 conviction cases, we would support a higher or, preferably, more flexible threshold as a trigger for automatic hearings in the case of Title 18 convictions.

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With respect to the timing of any hearing requirement, we strongly favor the approach taken in S. 2327 over that in H.R. 3848. H.R. 3848 would require the regulators to hold a hearing within 30 days of sending out a notice of a money laundering conviction. S. 2327, on the other hand, contains no such narrow time requirement. Instead, S. 2327 gives the regulators the time they need to build an adequate case against the convicted institution. If the goal of money laundering legislation is to curtail money laundering and get guilty institutions out of the banking business -- and we support that goal -- then the regulators must be allowed the necessary time to prepare for a hearing and build a record that will withstand judicial review. An unreasonably short time frame in which to prepare for and hold a hearing invites closer judicial scrutiny and may encourage reviewing courts to overturn an insurance termination or charter revocation decision.

Another very positive aspect of S. 2327, from the FDIC's point of view, is the enumerated factors the bank regulatory agencies must consider in deciding whether to terminate deposit insurance or revoke an institution's charter. Those factors specifically include: 1) whether there will be significant losses to the Federal deposit insurance funds or the RTC as a result of termination or revocation, and 2) whether the interest of the local community in adequate deposit and credit services would be threatened. Neither of these factors are included in the list of those to be considered under H.R. 3848. We urge that they be included in any final money laundering legislation.

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In addition to the principal concerns and positions just enumerated, we also would like to comment on a few of the other aspects of the insurance termination/charter revocation hearing requirements.

There is one logistical problem with the hearing requirement. The FDIC and other bank regulators do not always receive notice of money laundering or other criminal convictions involving financial institutions or their associated persons. This absence of notice is especially problematic in the House money laundering bill -- H.R. 3848 -- which requires the regulators to hold a hearing within a very short time after conviction. It would be useful to have a provision added to any final money laundering legislation requiring the Attorney General to provide written notice to the appropriate bank regulatory agency of money laundering convictions before any hearing requirement is triggered.

S. 2327 also would require publication of a notice of the termination of the insured status of an institution. The timing and content of the required public notice is unclear. If it requires publication of the final order of insurance termination, then we would support the requirement. In fact, such a requirement would be in keeping with provisions in existing law that require agency publication of all final orders. On the other hand, we would object if the provision is intended to require publication of the Notice of Intention to

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Terminate Insurance -- which notice may precede actual insurance termination by several months. Such an advance notice is likely to unduly alarm the depositors of the institution and could encourage runs on the institution.

Additionally, S. 2327 refers to having a "pretermination hearing." Since this is a new term and the requirement does not expressly supercede the hearing prescribed in Section 8(a)(3) of the Federal Deposit Insurance Act (FDI Act), it could be interpreted to require the FDIC to hold two hearings prior to issuance of a termination of insurance order. We believe this is not what was intended by the bill -- but some clarification would be helpful.

Removal of Institution-Affiliated Parties

We agree that individual officers, directors and other institution-affiliated parties should be removed from office if they engage in money laundering crimes. However, H.R. 3848 mandates removal, with no opportunity for hearing and without any consideration given to the egregiousness of the offense. Thus, we prefer S. 2327. It provides broader discretion to the agencies and affords the individual the right to a hearing, by listing conviction of money-laundering as a ground for removal, without strictly mandating removal.

We are also concerned that the addition of money laundering as a specific ground for removal of institution-affiliated parties

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under the FDI Act could be interpreted by the courts to somehow limit the authority of the bank regulatory agencies to suspend or remove such parties for offenses that are not specifically listed in the FDI Act. We would urge the Committee to include in its report, and in any conference report on money laundering legislation, a statement that the addition of money laundering as a specific ground for insurance termination and removal of institution-affiliated parties is not intended to affect or in any way limit the FDIC's authority to terminate insurance or remove individuals for non-specified crimes. We would be pleased to work with the Committee on appropriate report language.

Draft D'Amato "Money Laundering Enforcement Act"

We also have been asked to comment on Senator D'Amato's proposed "Money Laundering Enforcement Act of 1990." The draft bill contains provisions that would appear to be appropriate enhancements to the body of law designed to stem the tide of money laundering activities. However, with the exception of the proposed amendments to the Right to Financial Privacy Act (RFPA), the provisions do not cover areas in which the FDIC normally would have reason to express an opinion.

The FDIC believes that the amendments to the RFPA sought by the Department of Treasury would establish helpful exceptions to that Act. Exceptions designed to remove impediments to the

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transfer of financial records relevant to possible violations of money laundering statutes should aid in the detection and prosecution of money laundering offenses.

We question, however, the apparent breadth of the amendment that would permit one agency to transfer records to another agency if those records are "relevant to any matter" within the receiving agency's jurisdiction. "Agency" is not a defined term under the RFPFA. Therefore, it is not clear what governmental bodies would benefit from the exception. However, if the exception would allow all governmental bodies access to "financial records" any time the records are relevant to any matter within the receiving agency's jurisdiction, that exception would drive a major wedge in the body of protections contained in the RFPFA.

Conclusion

In conclusion, Mr. Chairman, we support the goals of S. 2327 and H.R. 3848 and welcome having additional tools at our disposal to punish money launderers and remove such persons from banking. We look forward to working with the Committee in hopes of incorporating some of the flexibility suggestions and other recommendations in our testimony.

Thank you again, Mr. Chairman. I will be happy to answer any questions you and the other members of the Committee may have.

The CHAIRMAN. Thank you, Mr. Beamon. I appreciate what I consider to be an affirmative and constructive response. I think it is helpful to us in developing a final package that we can get enacted this year. We thank you for your testimony.

Mr. Farnsworth, we would be pleased to hear from you now.

CLYDE H. FARNSWORTH, JR., DIRECTOR OF FEDERAL RESERVE BANK OPERATIONS, FEDERAL RESERVE SYSTEM, WASHINGTON, DC

Mr. FARNSWORTH. Thank you, Mr. Chairman, members of the committee:

I am pleased to appear before the Committee on Banking, Housing, and Urban Affairs today to comment on proposed legislation related to money laundering. The Federal Reserve places a high priority on supporting efforts to attack laundering of proceeds from illegal activities. We provide all currency flow data at any level of detail to all Federal law enforcement agencies upon request.

Every month we send cash flow data reports to relevant Treasury and Justice Department organizations for use by their experts. Individual Federal Reserve offices have also been providing additional detailed depository institution data to the Customs Service, Internal Revenue Service, the Drug Enforcement Administration, and others with a need to know.

Also, we continually engage in dialogue with Federal law enforcement officials to ensure that the Federal Reserve's contribution to the Government's efforts to combat money laundering activities is maximized.

In the regulatory area, financial institutions under our jurisdiction are continually subjected to the Bank Secrecy Act compliance audits as part of our examination process. In addition to enforcement actions that we may initiate as a result of violations of the Bank Secrecy Act, we provide quarterly reports to the Department of the Treasury which detail all Bank Secrecy Act violations discovered during the examinations of financial institutions.

Additionally, financial institutions under our jurisdiction are required to file a criminal referral form when criminal activity specifically including Bank Secrecy Act and/or money-laundering violations is suspected. The criminal referral forms are forwarded to the appropriate law enforcement agency for further action. I am emphasizing the system's active role to illustrate how strongly the Federal Reserve is in accord with the same objectives that Congress has in combatting money laundering.

We have reviewed the various legislative proposals, and we appreciate the opportunity to provide you with our comments.

First looking at revocation of charters and termination of insurance: The Federal Reserve recognizes the necessity for regulators and depository institutions to take an aggressive role in the battle against money laundering. S. 2327, as well as legislation passed by the House, addresses charter revocation or insurance termination of depository institutions convicted of money laundering or of cash transaction reporting offenses.

We have previously stated that any proposed sanctions take into consideration the nature of the violation and the effect of the sanc-

tion on the depositors and creditors of the institution, as well as ensuring that procedures for imposing any such sanctions take into consideration requirements for due process. S. 2327 and the legislation passed by the House have addressed the concerns raised by the Federal Reserve.

When Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Federal bank regulators were given significantly enhanced enforcement powers. An expansion of these enforcement powers as proposed in S. 2327, coupled with the banking regulators' traditional cease and desist and removal authority, should assist bank regulators in their efforts to eliminate the ability of persons and institutions to continue the illegal practices, and also to deter others from engaging in illegal activities.

With respect to registration of money transmitters: The Federal Reserve believes that it is important to oversee the activities of providers of financial services, including money transmitters, in order to ensure that they do not serve as a vehicle for avoiding the controls applicable to financial institutions.

Nevertheless, the form of oversight must recognize the importance of these services to those segments of the community that might choose not to use banking services and ensure that requirements do not encourage the availability of legitimate services.

We now understand that there may be a later version of Senator D'Amato's bill. My remarks today, however, are directed at the previous version that we did review.

For example, in Senator D'Amato's initial bill, the draft bill that we did review, we found that banks may be prohibited from transferring funds for unregistered money transmitters. This prohibition may discourage banks from providing funds transfers for individuals or legitimate businesses when the bank is unsure as to whether the individual or business is engaged in the business of transmitting funds.

Where a bank is aware that a customer is engaged in that business, it will be unable to affect funds transfers prior to checking with the Treasury Department to determine whether the customer has registered with the Treasury. I might add that the Federal Reserve obviously supports very strongly the know-your-customer concept.

With respect to wire transfer recordkeeping: The design of wire transfer recordkeeping requirements is a very complex and technical undertaking with potentially significant ramifications on the efficiency of large-dollar wire transfer systems. If Congress does adopt requirements in this area, we concur with the approach both by Senator D'Amato in his bill and by legislation passed by the House of Representatives. Section 7 of Senator D'Amato's bill directs the Department of the Treasury to adopt rules governing records of international wire transfers that would have a high degree of usefulness in Government investigations and proceedings.

The Board believes that a regulatory rather than a statutory approach provides the flexibility that is most often needed to adapt requirements to an evolving environment. We believe that a particularly important element of the wire transfer provisions in both Senator D'Amato's bill and the House legislation is the direction to the Treasury to balance the regulations' usefulness in law enforce-

ment with the effect of the ensuing requirements on the cost and efficiency of the payment system. These considerations should result in requirements that target those classes of international wire transfers that are most likely to be used in money laundering, and that focus on the completeness of information that can be accommodated in existing wire transfer formats.

In closing, let me state that we realize the Congress faces a difficult task of improving the ability of law enforcement authorities to detect money laundering activities, while at the same time protecting the public from overly intrusive and potentially harmful laws.

Please be assured of the Federal Reserve's commitment to deter money laundering and to cooperate fully in providing assistance to law enforcement officials who are charged with the very important task of uncovering money laundering wherever it may exist.

Thank you, Mr. Chairman.

[The complete prepared statement of Clyde H. Farnsworth, Jr., follows:]

For release on delivery
10:00 a.m. E.D.T.
May 18, 1990

Statement by

Clyde H. Farnsworth, Jr.

Director, Division of Federal Reserve Bank Operations

Board of Governors of the Federal Reserve System

before the

Committee on Banking, Housing and Urban Affairs

United States Senate

May 18, 1990

Mr. Chairman, I am pleased to appear before the Committee on Banking, Housing and Urban Affairs to comment on proposed legislation related to money laundering.

The Federal Reserve places a high priority on supporting efforts to attack the laundering of proceeds from illegal activities. We provide all available currency flow data, at any level of detail, to all Federal law enforcement agencies, upon request. Every month, we send cash flow reports to relevant Treasury and Justice Department organizations for use by their investigative and intelligence experts. Individual Federal Reserve offices have also been providing additional detailed depository institution data to the Customs Service, Internal Revenue Service, Drug Enforcement Administration, and others with a need to know. Also, we continually engage in dialogue with Federal law enforcement officials to ensure that the Federal Reserve's contribution to the government's efforts to combat money laundering activities is maximized.

In the regulatory area, financial institutions under our jurisdiction are continually subjected to Bank Secrecy Act compliance audits as part of our examination process. In addition to enforcement actions we may initiate as a result of violations of the Bank Secrecy Act, we provide quarterly reports to the Department of the Treasury which detail all Bank Secrecy Act violations discovered during the examinations of the financial institutions. Additionally, financial institutions under our jurisdiction are required to file a Criminal Referral Form when criminal activity, specifically including Bank Secrecy Act and/or money laundering violations, is suspected. The

Criminal Referral Forms are forwarded to the appropriate law enforcement agency for further action.

I am emphasizing the System's active role to illustrate how strongly the Federal Reserve is in accord with the same objectives that Congress has in combatting money laundering. We have reviewed the various legislative proposals and we appreciate the opportunity to provide you with comments.

Revocation of Charters; Termination of Insurance

The Federal Reserve recognizes that it is necessary for financial institutions regulators and depository institutions to take an aggressive role in the battle against money laundering. S.2327, as well as the legislation passed by the House, addresses charter revocation or insurance termination of depository institutions convicted of money laundering or a cash transaction reporting offense. We have previously stated that any proposed sanctions should take into consideration the nature of the violation and the effect of the sanction on the depositors and creditors of the institution, as well as ensuring that procedures for imposing any such sanctions take into consideration requirements for due process. S.2327 and the legislation passed by the House have addressed the concerns raised by the Federal Reserve.

When Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Federal bank regulators were given significantly enhanced enforcement powers. An expansion of these enforcement powers as proposed in S.2327, coupled with the banking regulators' traditional cease and desist

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and removal authority, should assist banking regulators in their efforts to eliminate the ability of persons and institutions to continue the illegal practices and to deter others from engaging in illegal activities.

Registration of Money Transmitters

The Federal Reserve believes that it is important to oversee the activities of providers of financial services, including money transmitters, in order to ensure that they do not serve as a vehicle for avoiding the controls applicable to financial institutions. Nevertheless, the form of oversight must recognize the importance of these services to those segments of the community that might choose not to use banking services and ensure that the requirements do not discourage the availability of legitimate services. For example, Senator D'Amato's bill would prohibit banks from transferring funds for unregistered money transmitters. This prohibition may discourage banks from providing funds transfers for individuals or legitimate businesses when the bank is unsure as to whether the individual or business is engaged in the business of transmitting funds. Where a bank is aware that a customer is engaged in that business, it will be unable to effect funds transfers prior to checking with the Treasury Department to determine whether the customer has registered with the Treasury.

Wire Transfer Recordkeeping

The design of wire transfer recordkeeping requirements is a very complex and technical undertaking, with potentially

significant ramifications on the efficiency of large-dollar wire transfer systems. If Congress does adopt requirements in this area, we concur with the approach taken by both Senator D'Amato in his bill and by legislation passed by the House of Representatives. Section 7 of Senator D'Amato's bill directs the Department of the Treasury to adopt rules governing records of international wire transfers that would have a high degree of usefulness in government investigations and proceedings. The Board believes that a regulatory, rather than statutory, approach provides the flexibility that is most often needed to adapt requirements to an evolving environment.

We believe that a particularly important element of the wire transfer provisions in both Senator D'Amato's bill and the House legislation is the direction to the Treasury to balance the regulation's usefulness to law enforcement with the effect of the ensuing requirements on the cost and efficiency of the payments system. These considerations should result in requirements that target those classes of international wire transfers that are most likely to be used in money laundering and that focus on the completeness of information that can be accommodated in existing wire transfer formats.

Conclusion

In closing, let me state that we realize that Congress faces a difficult task of improving the ability of the law enforcement authorities to detect money laundering activities while, at the same time, protecting the public from overly intrusive and potentially harmful laws. Please be assured of the

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Federal Reserve's commitment to deter money laundering and to cooperate fully in providing assistance to law enforcement officials who are charged with the very important task of uncovering money laundering wherever it may exist.

The CHAIRMAN. Thank you, Mr. Farnsworth. I would like to hear a little stronger statement out of the Fed, so I hope you were listening to your colleagues carefully today whose testimony has gone a little further, and I think constructively so. I would have you take a closer look at the money transmitters because I think the Treasury obviously has developed a real concern about them. I am not hearing quite the same level of concern from you. But having said that, I am very much interested in the positive suggestions that you have made.

Senator D'AMATO. Well, Mr. Chairman, in fairness to Mr. Farnsworth, he did comment that that was our initial draft. We have made certain modifications which I think have struck a balance, and I do not believe Mr. Farnsworth has had the benefit of the revised draft.

The CHAIRMAN. I think that is a fair comment. I do not want to make an inference that is unwarranted. It just seemed to me that the tone was not quite as strong on money transmitters as I would have liked to have heard. I would be happy to have you supplement your testimony.

I am going to yield my questioning period in this round to Senator Kerry, and then we will go to Senator D'Amato.

Senator KERRY. Thank you very much, Mr. Chairman.

I appreciate the comments that each of you have testified to, and I think it has been very helpful. I also want to thank you for the good process that we have had in working on some of these things prior to coming here. I think there has been a general consensus building which has been very important.

Let me just ask you, Mr. Beamon, if I can quickly, how many banks have been found—have violated and been found to have violated the title 31 Currency Reporting Requirements? Can you tell me?

Mr. BEAMON. I am not sure, Mr. Kerry, that we have an exact count of that. We did look into that very question this morning and yesterday, particularly more with respect to money laundering than currency transactions per se. We determined that there had been approximately 10 money laundering convictions over the past several years.

Our concern, as expressed in our written testimony, is that the FDIC may not actually have received notice of all occurrences of these offenses, and therefore we would not at this point have a precise answer. That would be something we would very much like to go back and get an exact count on.

Senator KERRY. On the currency—let me just understand that. Now on the title 18 money laundering—

Mr. BEAMON. Yes.

Senator KERRY [continuing]. You do have a count?

Mr. BEAMON. We determined that there had been approximately 10 money laundering convictions over the past several years.

Senator KERRY. OK, so it is 10 of that. I was going to ask that one. All right. Ten total in the last several years.

Mr. BEAMON. We are concerned that that may not be the true picture at all, and that was the point addressed in our written testimony.

Senator KERRY. Now when you say that may not be a true picture? That may not be a true and accurate record of those that have been found guilty? Or that may not be a true reflection of the numbers involved?

Mr. BEAMON. The FDIC may not have received notice of every conviction that took place. We are also concerned that we believe this is a growing offense. Therefore, those numbers may be much higher in the future than they have been in the past. It is becoming much more frequent for an institution or a corporation to be indicted and convicted of a criminal offense than has been the case in the past, and we believe that is a growing trend for the future.

Senator KERRY. Can you share with us any reason why the FDIC would not have received those notices?

Mr. BEAMON. There is no particular reason. We did suggest that the committee include a requirement that the Department of Justice notify the FDIC every time a conviction occurs. At the moment, it tends to be somewhat haphazard whether we receive notice or not. The FDIC may simply find out about it by reading it in the newspaper. We would like to have a more systematic way of receiving notice any time a conviction takes place. We simply cannot guarantee that we have uncovered or are aware of every one that takes place.

Senator KERRY. It seems to me that a conviction, a criminal conviction, goes almost automatically to the question of safety and soundness.

Mr. BEAMON. I would agree that where the institution or one of its senior officials is involved, that would be the case and we should be made aware of that conviction immediately.

Senator KERRY. It seems, therefore, even further that that underscores the reason for wanting to have an automatic process of a hearing in those instances. Remember, as I listened to your testimony and you were concerned, the principal concern that you expressed was the possible cost, I believe, of having an automatic hearing. How many instances have there been of those 10 banks where there has been the other—where the other requirements with respect to the directors, or two or more corporate officers being involved? Do you know?

Mr. BEAMON. I do not have an answer to that question offhand. We simply came up with those numbers very recently and we have not done a correlation between what types of enforcement actions we've taken against those specific institutions. We do not, for that matter, know that they were all State nonmember banks, so it is possible that the Federal Reserve or the Comptroller of the Currency may have taken action against some of those institutions if they were national or Federal Reserve member banks. That is something that we could provide you with information on, if you would like to receive that.

Senator KERRY. Can anyone answer that? Can you speak to that, Mr. Farnsworth, or Mr. Nunez?

Mr. FARNSWORTH. Senator Kerry, we do have some statistics on violations of the Bank Secrecy Act as the result of examinations of State member banks. In 1989, for example, we examined 877 State member banks and we detected 161 title 31 violations. In 1988, we examined 940 banks and we detected 166 title 31 violations.

Senator KERRY. What about title 18?

Mr. FARNSWORTH. We are only aware, Senator Kerry, of one conviction of a financial institution for money laundering violations under title 18.

Senator KERRY. Well, I think balancing Mr. Beamon's testimony against that reality, I think to me it underscores even more the importance of this legislation. I do not want to just focus on that, but I think that it really brings home the fact that one entity has not really been communicating to another, and nobody has really been taking it that seriously, and if it is a newspaper article that results in a consideration of more serious treatment, then that it seems to me is its own silent testimony regarding the need to have this particular legislation—which hopefully will coordinate that effort and institutionalize the process by which people are going to be held accountable.

Let me ask further, Mr. Beamon—or Mr. Nunez, before the House regarding international wire transfers, and let me quote you:

Our preliminary review indicated that we may need to increase recordkeeping with respect to what appear to be purely domestic wire funds transfers that in fact have a foreign source or destination.

Can you clarify what you meant by that to me?

Mr. NUNEZ. Well, I think what we found during the process of examining this whole issue of wire transfers was the domestic part—I will not say it was overlooked—but it had not been fully appreciated. I think we need to consider all aspects as we go forward, the domestic and the international components.

Senator KERRY. When you say you have a "purely domestic wire fund transfer," but it in fact has a foreign source or destination, what do you mean by that? How is it "purely domestic" but also has a foreign—

Mr. NUNEZ. I think what we are referring to is that we may find, or have found in certain instances, that a wire went from point A in the United States to point B in the United States, but in checking either end, we found that it had come from or to a foreign country. So there was a purely domestic component of it, but the money may have flowed further than just within the United States.

Senator KERRY. What are you considering doing with respect to that tracking process?

Mr. NUNEZ. Well, in the regulatory process, as part of the regulations, we are looking at what kind of information we should ask or require be kept on both domestic and international wires. Whatever happens in the United States is obviously easier to control than what happens in some other part of the world. We may not have access to what is going on overseas.

Senator KERRY. But why would there be any restraint in requesting from a domestic recipient information regarding the source? I have always heard people say, well, gee, we do not want to violate the Bank Secrecy laws of another country and they cannot violate it. Why can we not require of our domestic recipient the information of source?

Mr. NUNEZ. We could.

Senator KERRY. Why has that not been done?

Mr. NUNEZ. Well, that may be one of the things that you see in the regulations when they are issued; that is one of the things we are thinking of including in these regulations.

Senator KERRY. I see the red light is on. I will come back to this one.

The CHAIRMAN. Very good. Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

I was going to say to my colleague that if he wants to continue his train of questioning, I certainly have no objection.

Senator KERRY. I appreciate that. Let me just take a moment here. I have a number of areas I want to go to, and this is an area of your concern, but is there any way that you perceive that regulating the wire process would put the U.S. banking system at a competitive disadvantage?

Mr. NUNEZ. Well, there are various comments we have received to the effect that, if we make the burden of recordkeeping so complicated, so onerous, our domestic banks, U.S. banks, will lose business and the money will go through other systems. At least that is the tenor of a number of the comments we have received.

Senator KERRY. Well I have heard those comments before. In fact, I think there was one Assistant Secretary of the Treasury who testified before our other committee suggesting that if you want to turn the United States into the Roman Empire, the quickest way to do it would be to regulate the wire transfers. Would you agree with that kind of an assessment?

Mr. NUNEZ. I think the point we all understand, and you mentioned it in your opening statements as well, is that there has to be a balance. Obviously you can over-regulate something to the point that it does not work anymore.

Senator KERRY. Well let us get at that a little bit. I mean, is it over-regulation to require a bank to know where money is coming from? What the source is? Is that over-regulation?

Mr. NUNEZ. Let me answer that this way. It depends on what the alternatives are.

Senator KERRY. The alternatives are that you do not know, and therefore you have no accountability of money laundering.

Mr. NUNEZ. What I meant by that is there are some banks that, if you do business with them, they are going to require you to do business this way. But if there is a bank across the street or across the State line, or across the border that does not require you to do those things, at some point whatever may appear to be a minimal intrusion or a minimal burden here, is still more than the other countries may require. And that is I think one of the reasons why the international—

Senator KERRY. Well let us go down that road. Let us assume—I mean, this is the situation. We already have a system within the Continental United States, and there are folks who have a different system outside. Whether it is the Cayman Islands, or Hong Kong, or the Bahamas, or Panama of recent years, that has become a haven. But it is usually dollars passing—it is the dollar system.

The question is: Can people bypass CHIPS? Could people actually avoid the U.S. system if the U.S. system were setting up strict requirements? I find it very hard to see how in today's world of inter-

dependence with the enormous investment in this country and the amount of dollars in circulation that that would become anything except a pro forma way of doing business, the reporting.

Mr. NUNEZ. Well I think several things happen. One is what we see with these miscellaneous financial institutions. To some degree, we have had success with the existing banking system in getting them out of certain aspects of money laundering, so the bad guys are now using nonbanks.

I think by the same token, other countries think—and I think our banking institutions believe—that, to some degree at least, the more you tamper with the wire transfer CHIPS system, the more likely it is that some other country would develop a competing system. Now it is admittedly speculation, I suppose, as to whether that would happen, how successful it would be, but at least that is the fear.

I think that is the concern. We need to make sure that we do not cause that to happen.

Senator KERRY. But follow that down. Maybe I am missing something, but if they set up a different system—let us say they had a clearinghouse in Europe for United States dollars, those dollars still must be repatriated at some point in time, must they not, in order to go to work?

Mr. NUNEZ. One of the procedures I suppose that can be used is a combination of book entries being made, and then using offshore clearing wires, using existing foreign country systems to do it. So I think it can happen. We do not think that the regulations that we are looking at will cause any catastrophic effects on the U.S. banking industry, and it will provide us with the additional ammunition we need to deal with international wire transfers.

But I think at least in the abstract, certainly we can go too far, but we are trying not to.

Senator KERRY. Let me hold off now. I do have another round, but I want to thank you very much, Senator D'Amato. I will let you pick up on that.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. First of all, Mr. Chairman, again I want to reiterate what a great pleasure it has been over the years to come to be focused much more than I had been heretofore on the enormity of the problem. I think most of that contribution came as a result of the great work that Senator Kerry undertook as it related to our findings, which were mind-boggling and eye-opening. I do not know what else to say. They were just incredible.

We saw that Noriega had this laundering scheme, and that so many of the financial institutions—the great financial institutions—in our own country, and so many bankers at certain levels willingly participated. They knew. They knew that the source of these dollars certainly were illegal sources. They had to suspect that that source was chiefly drug money, because it came in in such quantities. We heard that testimony.

So again, I think we all owe you a deep debt of gratitude for focusing us in on this area.

Senator KERRY. You know, Senator, if I could just share something with you that is being released this morning, which only documents what you are saying much more. As you know, our commit-

tee when we are back working there subpoenaed the Oliver North diaries. Those diaries we have just secured, and they are finally, 2½ years later, we now have them, and the unclassified portion of them is being released this morning at the National Security Archives.

One of the sheets of paper there shows an entry of Oliver North back in 1986 in which there is a recordation about Noriega having called after the Sy Hurst article in the New York Times that exposed—which we talked about—which exposed his involvement in drug trafficking and money laundering. And Oliver North writes several entries about Noriega being concerned about how to clean up his image, and North writes “money laundering, drug trafficking,” et cetera, “is a concern. We are setting up a meeting in order to help him clean up his image.”

So the response of our Government was not that he is involved in money laundering, get rid of him; we have got to do something about it. It was, how do we help him clean up his image. And that is part of the problem here. We have just gone through this process of total sort of looking the other way and of avoidance. But it is interesting in the context of where we have traveled together.

Senator D'AMATO. I would like to ask Mr. Nunez something. I have found the Treasury most helpful and Mr. Nunez in particular and the IRS Commissioner Fred Goldberg who has come up with some great ideas. I would like to share some of them with the Senator at a later time, but I would like to ask a question that I have heard put to me so many times. I think former Secretary Don Regan put it forth. I was having dinner with a dear friend the other night and he set it forth.

What is to prevent the Treasury from changing the color of money? As it relates to illegal sources—you know, if you had a person who has tens of millions and hundreds of millions and billions, they are going to have a pretty tough time accounting for that money. You would obviously do it with rules and regulations and you would do it within a period of time and say people have to show where it came from.

Now if you want to talk about laundering by illegal sources, I just think it has got tremendous possibilities. You could take the larger denominations starting with I guess a \$20 bill, which I guess is not too large today, but do it in \$20's, \$50's, and \$100's, would that not really be one heck of a blow to the organized crime enterprise, not only as it relates to drug traffickers, and all of the tax cheats? What a great way to give it to them. Are you thinking about that?

I know it is unfair because we have not—and I might catch you short on it, but I would like to know what thinking, if any, have we undertaken along that line?

Mr. NUNEZ. Before I arrived, Treasury received a submission from the Drug Enforcement Administration to look at one part of it. I think their proposal is mostly an overseas proposal to have a different color money overseas as opposed to domestically.

I have seen some other ideas. We are looking at them. I am not prepared to give you any conclusions at this point, but I understand the idea, generally. Why it will not work has not yet been

made clear to me, but we are looking to see if this is something that makes sense.

Senator D'AMATO. I would suggest to the chairman the possibility—boy, we will see a rash of activity. There will be a lot of money floating around if they hear that. Sales will go up. You will get a lot more revenue and the criminals will have to wash it a lot quicker, Mr. Chairman. I would suggest we should possibly have a hearing, because we have never had a hearing on it. In the years I have heard this, this is not novel, it is not new, this idea, but many people have put it forth. Why do we not do it? Why do we not attempt to do something, whether it is the size of the bill, et cetera, and come forth with regulations that people have to tell us where the money comes from?

I mean, do we want to fight the war against organized crime? Do we want to fight the war against drug traffickers? Let them account for that money. They will have a pretty tough time when you are talking about the kinds of dollars that are involved in drug trafficking. I think it certainly would gum up the works. So I just throw that out.

Mr. Nunez, as you know we have discussed banks identifying their nonbank institutions that they deal with. Section 2 of the legislation which we have proposed deals with banks knowing their customers—the money transmitters, the check cashers, the foreign exchange dealers, the redeemers of Traveller's checks. How would this provision help Treasury and the banks identify companies that are really nothing more than fronts for money laundering?

Mr. NUNEZ. Well, Senator, I think we all realize now that whatever systems now exist are not working. Whatever is supposed to be working is not really working. There are, at least theoretically, ways to get at these institutions through the CTR and the 8300 provisions, but enforcement has not caught up with the need yet.

We do not know who these institutions are. I think that is the biggest problem. What we need is some method of identifying them so that we can target the available resources either in specific regions, or at least within certain agencies, or both, to go after them.

This will also help those States that do have regulations, or licensing provisions and regulators to help them to identify these institutions and do their side of trying to clean this up. I think the most important thing is that it gives us a list of who we need to look at.

Senator D'AMATO. One of the things we do in section 4 is we authorize Treasury to issue rules requiring financial institutions to have stronger know-your-customer procedures. That is something again that Senator Kerry has focused in on with the banks.

What sort of know-your-customer procedures does Treasury have in mind? Would you require banks to ascertain that a money transmitter customer is licensed? I think you have indicated that you would.

Mr. NUNEZ. Well, if States have licensing provisions, we think that the bank ought to ask to see the license and take the number down and get a copy of it, or keep it in the file.

Senator D'AMATO. Let us talk about specifics. Supposing our State, the State of New York, which does have a licensing provision, if one of these wire transmitters fails to register, under our

bill we provide that that is a Federal violation. So we would have the ability, if the authorities determined it to be an illegal money laundering center, to come in on the Federal side. Is that correct?

Mr. NUNEZ. Yes.

Senator D'AMATO. Now let me ask you. What sort of know-your-customer procedures do you have in mind?

Mr. NUNEZ. Well, certainly who you are. If the customer is a company, and if there are any other licensing provisions, the bank should ask what they are. Do you have a business license? Who are the principals of the company? Names? Addresses? Locations? What kind of business does the company purport to be in? I think from that and other kinds of similar information, the bank can then determine whether the business activity, the banking activity that goes on, is consistent with that kind of business. I think that is the whole point.

Senator D'AMATO. Can we put that responsibility on the bank to know that customer so that we then have a mechanism for identifying the kinds of activities that would not flow in the ordinary course of business? Is that not correct?

Mr. NUNEZ. Yes. But I think most banks that are doing business, at least with companies, now probably require some if not all of that information when opening commercial accounts and opening checking accounts, or when carrying out other kinds of normal business activity. So I don't think we are asking them to do revolutionary things. I think any prudent banker would want to know most of these things anyway.

Senator D'AMATO. Section 7 contains a number of amendments that are needed to continue what otherwise would be provisions that expire under the law. Do you care to comment on those? The first permits Federal law enforcement agencies to continue to receive information reported to the Internal Revenue Service by companies such as car and boat dealers making cash sales involving more than \$10,000.

Mr. NUNEZ. That is correct. That provision expires, and we need to have that renewed. So far—and I think on an increasing basis—we have seen the results of investigations utilizing that information, and we think it is a very helpful provision for law enforcement and should be continued.

Senator D'AMATO. Now the second re-establishes the authority of the Internal Revenue Service to use the income generated from an undercover business operation to pay the expenses of that undercover business. Now why is that an important provision?

Mr. NUNEZ. First of all, they have had the authority in the past, and it allows them to keep the undercover operation going. Otherwise, they become prohibitively expensive. It also puts IRS on the same footing with other Federal investigative agencies which already have this authority. These are some of the most productive investigations that you have, the undercover ones, and your ability to play the game out with the bad guys; the longer you can do it, the better the case.

Without this provision, at least theoretically, IRS would have to close down the undercover operation and is stopped in its tracks.

Senator D'AMATO. Let me just ask you about one other provision which it seems to this Senator is absolutely essential and we have

people under the so-called Right to Financial Privacy Act. There are those who use this as an excuse to impede what is a lawful and I think a necessary activity by the Government. That is, to permit the financial records obtained by an agency in accordance with the Right to Financial Privacy Act to be transferred to another agency without notice.

Now if there is reason to believe that the records are appropriate for analysis for law enforcement purposes, I think you might want to comment on why that is necessary.

Mr. NUNEZ. Well thank you, Senator. There are several reasons why. First, any one of our Federal law enforcement agencies could get hold of some records in due course, and then want to exploit those records. They may find violations that relate to another investigative agency that they want to turn it over to.

Second, they may want to work jointly with other agencies—for instance, in a drug task force or in a money laundering context with other agencies. So you need to have the ability to share whatever information you get with your colleagues in law enforcement. We do not think that this opens the flood gates, and we are not making these records available to the general public.

We think this is a very controlled and very orderly way to proceed.

Senator D'AMATO. Mr. Nunez, I want to say for the record that we are deeply appreciative of the cooperation that we have received. As the Chairman has indicated, there has been an attitude to attempt to deal with some of the concerns I think that those in the banking institutions and others have raised. Some I think are genuine. Others I think are not. I believe that you have approached this with a balance, and hopefully we will be able to pursue this and see that there is the kind of legislation enacted that gives us the ability to fight the money launderers and go right to the source and strike a crippling blow.

I have to say that in the city of New York there are hundreds and hundreds of these illegal wire operations of various sorts and kinds, and we know that there are billions of dollars being laundered. I think that with the implementation of the legislation that Senator Kerry and I have put forth here, we can make an impact. I think the Senator is right when he says if you are able to seize 5 to 10 to 15 percent of those funds—and I do not see why we could not—and disrupt that flow and make it much more difficult, we can then make a meaningful impact in the so-called war against drugs.

We have got to make it tougher for these people. And again, it seems to me that some of the things that we ask for, such as know-your-customer, are not too much. If you have got a little storefront doing \$100,000, \$200,000, \$300,000 and more in the course of a week in cash, you should know how is it that they generate it. And is it really a legitimate travel agency? Or a legitimate check-cashing operation? And there are other kinds of things that I do not want to discuss in public here, ways that I think will give law enforcement people an opportunity to pick up on that and crack down on them.

But they right now have an open field day, and they are absolutely making the most of it. So where we could be doing something, I just think we have not responded. And I would like to see

the day that we quickly enact not only this legislation but the rules and the rulemaking that you have indicated you would be willing to follow through on.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator D'Amato.

Senator Kerry.

Senator KERRY. Thank you very much, Mr. Chairman.

Following up on Senator D'Amato's appropriate inquiry there, let me just call to attention, I think it was yesterday there was a very significant seizure of cocaine off of Japan with a new sense of alarm in Japan about the potential of them now becoming far more subject to the sale of cocaine and so forth, and Europe is now receiving I think somewhere around one-third or more of the shipments out of Central America, Latin America.

The reason I raise that is that the G-7 countries at the Paris Summit last year issued a major proclamation about money laundering and about the new focus that would take place on money laundering. I wonder, Mr. Nunez, particularly in view of the regs that Treasury is now thinking about with respect to source information and bank secrecy, do you see this growing potential for alarm in the world community about other societies becoming consumer demand societies for drugs facilitating your efforts now to get this kind of source information to overcome some of the obstacles of the secrecy laws?

Mr. NUNEZ. I think that is definitely true. I have not been in town long enough to be able to compare the reaction that my predecessors have had in the past, but I know that at least in the 4 months that I have been here, there is fairly intense interest raised for a number of reasons, not only because of the use of drugs, but because some of the cases that have been made that demonstrate how the international banking communities have been involved.

Legislation has been enacted here on the Hill which has received attention around the world. So I think that we are finding that everyone wants to talk to us. Now how successful we will be, time will tell.

Senator KERRY. Well, it seems to me it is going to be a question of the attitude also of the Fed here and the whole operation of our CHIPS system, et cetera, because if someone can anonymously send a large sum of money to this country by wire transfer and there is no source pinpointed, I do not know how you get at this.

Can you tell me, Mr. Farnsworth?

Mr. FARNSWORTH. It certainly is a difficult problem. This is a subject, by the way, that a group of payments experts from the G-10 countries will be discussing the first week of June in Basle, Switzerland, on some of the actions that the various G-10 countries intend to take with respect to money laundering activities, and how they may assist us and us assist them in these activities.

Senator KERRY. Can I ask you a question? Bank secrecy really grew up maybe 60 or more years ago, I believe, growing out of Switzerland and some of the experiences in Europe, and it kind of spread in a patchwork fashion. There was no sort of concerted acceptance by the banking community of it. It was convenient, and then it became a nice way of being a haven.

Given the problem that we face, and given the rules that apply to money that exits from a bank—I mean, banks know who the heck they are giving money to if they are borrowing. You sure can't come into a bank and take money out of it without going through a pretty rigorous examination.

Now there was some lapse of that in the S&L process, and so forth, in recent memory, but we have certainly learned about—we have learned some lessons as a result of that, hopefully. But the point is that most good banking practices contemplate knowing who they are lending to. Why should there not be a similar standard of knowledge with respect to who the money is coming in from?

Mr. FARNSWORTH. One of the particular difficulties I think with the wire transfer system is the fact that when a wire is sent, the party of interest could be three or four steps removed from the institution, the organization, the firm, or the individual that ultimately puts the order in-through the wire transfer system.

That organization may represent another organization, which represents another one. In some of those cases, they are obviously very legitimate. In other cases, they are not legitimate purposes. But it is very difficult to trace through. And once a wire transfer does reach a party and then begins to go through various steps, law enforcement authorities have a tremendous problem in tracing that.

Senator KERRY. I understand that. I absolutely understand that. As a former district attorney, and so forth, I understand the complexity of tracking white collar financial transactions—which is why I have come to the conclusion, and it is not going to be a happy one in the context of some of the banking community, but it depends what the intent is here.

There are very few situations where one can legitimize secrecy. There are a few, and I can contemplate a few for national security reasons, and a couple of others. But with the exception of those situations, it seems to me that the G-7, G-10, whatever you are going to look at, the power houses of the world economic community are going to have to come together, and they are going to have to say: If we are going to be able to control illicit transfers of cash, we are going to have to reconstitute the international banking system in a way that we are all living by the same standards.

Once those powerhouse countries are living by that standard, they are going to leverage smaller people into the same standard of behavior. And until people are saying: You do not get access to our banking system without the following strictures being lived up to, you are never going to track that third, fourth, fifth removed transaction.

But if each of those transactions are coming from a known source, a known recorded entity, and in fact those banks have set strict standards of entry of money into their system, you could even have a code system set up where, once they have entered by that, they are approved by the international system and they could wire transfer to a subsequent bank those similar amounts of money in a way that did not require repetition of that.

But I think it goes to the whole sense of know-your-customer. I mean, either it is really going to be applied or it is going to be pure rhetoric, and I think you folks have to confront that issue, frankly.

Mr. FARNSWORTH. May I bring up one other issue that is of particular difficulty, and it refers to some extent back to the question you asked Mr. Nunez earlier about the possibility of funds moving off-shore, wire transfers moving offshore.

Today with the technology that we are seeing both in the payments world as well as in general technology, the communications world and the data processing world, we see signs all over the world that netting systems are being established to clear funds, to net funds, in various kinds of currencies.

One of the most common I guess that we know of today is the Chase-Tokyo netting system where the dollars are netted offshore in Tokyo before they come back to the States. So what we would see here and what would go through CHIPS would simply be the net of many transactions that have taken place. That certainly is another difficulty and complexity.

Senator KERRY. I cannot disagree with you, which I am convinced that this thing has to address. That was the purpose of the Kerry Amendment, which was opposed by the administration 2 years ago or so, which was that you have got to have front-burner international negotiations on this to try to establish some international protocol on it.

Without it, our law enforcement folks and our banks I think are just going to be whistling in the wind, and it is not going to be a healthy situation.

Mr. FARNSWORTH. Right.

Senator KERRY. So I understand that it is indeed complex.

Another quick question, Mr. Farnsworth. This is from the New York Times Business Section of yesterday, which I think highlights some of this problem:

A prominent Panamanian family has bought the Key Biscayne Bank from Charles Bebe Rebozo, a confidant of former President Richard M. Nixon, for an unspecified amount of money. The bank's spokesman said on Tuesday that negotiations had not yet been completed between Mr. Rebozo and three trusts held by the blank family of Panama and Miami.

Now that is the extent of the article. I assume it is a State-chartered bank. Does that mean that the Fed knows nothing about this kind of transaction?

Mr. FARNSWORTH. If the bank itself, if it is a State-chartered bank and not a member of the Federal Reserve, that transaction would not go through the Federal Reserve, as you know. If it is a nationally chartered bank, it would go through the Comptroller of the Currency.

If on the other hand it were to become a subsidiary or was a subsidiary of a bank holding company, the Fed would be involved and would have information available to it through its responsibilities for bank holding companies.

Senator KERRY. So the point I make is that under several circumstances, you folks would have nothing to do with this and might not know anything about it. Correct?

Mr. FARNSWORTH. That's correct.

Senator KERRY. Now to what extent would the State authorities conduct any investigation about the source of this kind of purchase? Nonexistent, basically? Am I not right?

Mr. FARNSWORTH. Probably so. Mr. Beamon may be able to elaborate on that particular issue, but I really do not know the answer to that.

Senator KERRY. Can you, Mr. Beamon, share any—

Mr. BEAMON. Senator Kerry, this particular transaction, if it involved a State nonmember bank and involved a change of control of the institution, would be subject to the Change in Bank Control Act, and therefore for a State nonmember bank the FDIC would have authority to disapprove the change of control.

Likewise, if it involved a holding company acquisition, the Federal Reserve would have that authority. Or if it is a national bank, then the Comptroller of the Currency would have the authority.

In that instance, I think we would have an opportunity to look at it. I am not sure to what extent all States look at that kind of transaction, but I believe one of the Federal banking agencies would have the opportunity to review the transaction.

Senator KERRY. Do you think, either of you, that the Fed should be more involved in that? Or that there should, in view of the problems that we are having now, that there needs to be some thinking about whether or not we do not need greater scrutiny of these kinds of transactions and some uniform standard being applied to them?

Mr. BEAMON. The Change in Bank Control Act essentially applies the same standard, whether it is a national bank or a state nonmember bank, or a national bank. Therefore I believe the standards are consistent. Also, if it is a holding company acquisition, the Federal Reserve would normally consult with the FDIC in the process.

Senator KERRY. Did you want to comment at all?

Mr. FARNSWORTH. I was just discussing this with legal counsel from the Board and he also feels as Mr. Beamon stated that this should be covered, but we really have not had a chance to look at that very thoroughly. But it would appear that one of the Federal banking regulators would have an opportunity to look at it at some point.

Senator KERRY. Well, another example would be the BCCI situation which raises disturbing questions of that kind of oversight, also. Have you seen a story in a Washington business magazine concerning BCCI's possible ownership of a leading area bank here?

Have you seen that, Mr. Farnsworth?

Mr. FARNSWORTH. No, I have not personally seen it.

Senator KERRY. Could you describe to me the various means by which a foreign entity would enter the U.S. banking system? It would either be by a representative office or an agency office? Is that correct?

Mr. FARNSWORTH. That could be by, yes, by a branch office, an agency office, or a possibility of a branch of a U.S. bank. There are a variety of different ways that it might happen.

Senator KERRY. What role does the Fed play in regulating any of those entities?

Mr. FARNSWORTH. Under the International Banking Act of 1978, the Federal Reserve has residual supervisory and enforcement responsibilities for foreign banks that maintain an uninsured branch or an agency in a State. Additionally, under the Federal Reserve Act, we have responsibility for Edge Act corporations.

Senator KERRY. My time is up.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

The CHAIRMAN. Let me just say, I want to continue as long as we have questions that you and Senator Kerry want to raise with these witnesses because this is central to laying the foundation for our legislative package.

However, we have three other important witnesses that we want to hear from this morning—

Senator KERRY. I just have a couple more questions.

The CHAIRMAN. I say that not to hurry either of you, because I think it is important that we complete this work. But I do want to indicate that there are other witnesses that we will be hearing from, and we want to make sure we have some time for them as well.

Senator D'Amato.

Senator D'AMATO. Mr. Chairman, I only have several questions I would like to ask Mr. Farnsworth, and maybe this will catch him a little short, but pursuant to the suggestions of what the impact would be on the entire banking system, what negative impacts would you see if we were to change the color of money, let us say dealing with the \$50 and \$100 bills? Any problems? What would be involved? What problems would you foresee? How would you handle it?

Mr. FARNSWORTH. One of the major problems I could see would be in the conversion itself. That would take a quite lengthy period of time. Our estimates of the quantity—the stock of our currency that is circulating overseas would probably put somewhere in the neighborhood of 30 to 40 percent of the total dollars in existence circulating overseas.

In many cases, as you well know, those dollars are primarily the currency of that country in some cases where their own currencies are not as stable as they might like them to be. So it is a timing issue.

Senator D'AMATO. This is like Panama, for example? So that would be of some concern?

Mr. FARNSWORTH. That would be of some concern. The distribution, if there was some intent to bring that currency in and re-issue currency in the same areas, you would have a distribution issue.

Senator D'AMATO. Let me ask you, has there been any study or review as it relates to possible requirements in terms of record-keeping, for a instance, for swap of the money or exchange of the money?

Mr. FARNSWORTH. We have not done a specific study on that. Generally, as I recall, when the silver certificates in the 1960's were withdrawn from circulation, a notice was simply issued that they would be redeemed.

Senator D'AMATO. No questions asked.

Mr. FARNSWORTH. No questions asked, essentially in that case. Of course this is a different environment, and in this particular case I would assume that there would be questions asked in the cases of large amounts of dollars being swapped for a new currency.

Senator D'AMATO. Do you think it is worthwhile for us to pursue some study as it relates to this and what the effectiveness may or may not be, or might be?

Mr. FARNSWORTH. I certainly see no harm in studying that. We would be very happy to work with the Treasury and the Bureau of Engraving and Printing on such a study.

Senator D'AMATO. Mr. Nunez?

Mr. NUNEZ. Just a quick point. I suppose that the study would look at the logistical problems and the expenses of doing it on the one hand, and what do we gain on the other hand—

Senator D'AMATO. But—

Mr. NUNEZ [continuing]. And I guess one thing we would look at is: Do the drug money launderers really hold onto this money for a long period of time to begin with? At least we think that in most cases they are getting their hands off the money very quickly, and I do not know whether you will catch them with a bag of money if you issue this change. I do not know whether they would still have it in their possession.

Senator D'AMATO. It would be interesting to get an estimate as to how much illegal money you think is in the system and what kind of problems would we create for people who are skimming from their taxes, people in organized crime, or in the drug trade or others.

And as you ask—and it is a very legitimate question—whether or not the problems attendant with that kind of situation, the benefit ratio as it relates to the benefits' game, if any, whether it squares up.

But it seems to me that we ought to take a look at this and make a study pursuant to that outline: Would we impact the money laundering, the illegal dollars that are out there? How many billions are there? I do not know. I would have to think it is significant.

Let me ask one other question, Mr. Farnsworth. It has been suggested in the House that the Federal Reserve could determine the extent of the use of \$50 and \$100 for drug trafficking. Could you make any estimate as to how much they are used for drug trafficking? Do you have any idea if those are the major denominations that are used? Or would it cause serious problems elsewhere to withdraw the \$100 for example?

It certainly would be kind of difficult, and I think create some problems for the money launderers and make it a much more difficult proposition. They would have to deal with the \$10's and \$20's. So what impact would there be if you withdrew let us say the \$100 bill and the \$50 from circulation? What kind of attendant problems would there be?

Mr. FARNSWORTH. I understand that Treasury did a study of this last year. I am not sure exactly—I am not fully familiar with the total results of that study. The \$100 and the \$50 bills obviously are bills that are used as payment in illegal activities.

We have had discussions with other countries, just recently as a matter of fact, on their consideration for either issuing a larger note or withdrawing the largest note they have in circulation. So we continually talk with the countries. The Bank of Canada is right now considering the possibility of putting in a large denomination note.

We know of other countries who are considering withdrawing the note. The point of making those statements is simply to say that unfortunately information available to the Federal Reserve at this time does not tell us precisely how much of the activity is done with the \$50 and the \$100 note. It would be nice to have more information.

We also find that the \$20 bill is used in illegal activities.

Senator D'AMATO. Mr. Nunez?

Mr. NUNEZ. That is what I was going to say, that the \$20 is also used very frequently.

Senator D'AMATO. Do you think we could ever develop an effective study? Is that a possibility? I think our colleagues in the House are asking us to look into that. What would your opinion be?

Mr. Nunez. Well, as Mr. Farnsworth has indicated, Treasury did do a study last year. It probably did not include as many folks as we would include if we were to do it again. But at least someone thought it was worthwhile a year ago, so it is probably still worthwhile.

Senator D'AMATO. Mr. Chairman, I have no further questions. And again I want to thank Mr. Nunez and Mr. Farnsworth for their cooperation.

Mr. FARNSWORTH. Thank you.

The CHAIRMAN. Senator Kerry, did you have a final question?

Senator KERRY. Mr. Chairman, I am going to hold off. What I will do is I will just submit it in writing. There are a couple of just detail things, and we can get them in writing.

The CHAIRMAN. I have some questions, too, that I will be submitting for the record for myself and for other members.

We thank you for your testimony today and for your great patience, as well.

Thank you.

Let me now excuse this panel of witnesses and introduce our next panel of witnesses: Mr. Boris Melnikoff, who is Senior Vice President of First Wachovia Corporation, testifying on behalf of the American Bankers Association; Ms. Susan Sweeney, who is the Senior Vice President and General Counsel of Deak International, Ltd.; and Mr. Stephen Wolf, who is Treasurer of Pay-O-Matic Corporation, testifying on behalf of the National Association of Check Cashers.

Let me just pause for a minute while our witnesses get settled at the table.

We will wait a moment for others to exit the room, and those that are remaining to find seats. Then we will begin.

[Pause.]

Let me say to each of our witnesses that we will make your full statements a part of the record. I know the hour is late, so I am

going to ask you to summarize your testimony as best you can. We will be pleased to hear it now.

We will start with you, Mr. Melnikoff.

**STATEMENT OF BORIS F. MELNIKOFF, SENIOR VICE PRESIDENT
FIRST WACHOVIA CORP., ATLANTA, GA, VICE CHAIRMAN,
MONEY LAUNDERING TASK FORCE, AMERICAN BANKERS ASSO-
CIATION**

Mr. MELNIKOFF. Thank you, Mr. Chairman.

The American Bankers Association welcomes the opportunity to discuss S. 2327 and the recently passed H.R. 3848 and other proposed legislation on money laundering.

The CHAIRMAN. Excuse me just for one moment. Could I ask you to just pull the microphone down a little bit? I want the people that are in the back of the room to hear clearly.

Senator KERRY. Mr. Chairman, could I just intercede before they all start?

The CHAIRMAN. Yes. By all means.

Senator KERRY. I wanted to apologize to them up front. I have a daughter's game back in Massachusetts, and I have a flight that is leaving shortly, so I just wanted you to know that I am not running out on you for any reason except a very personal and important one, and I hope you will understand that. But we will obviously follow your testimony closely.

Thank you.

The CHAIRMAN. Very good.

Mr. Melnikoff.

Mr. MELNIKOFF. Thank you, sir.

The Banking industry appreciates the work of this committee in fashioning a bill that addresses our concerns without proposing solutions that would fail to give the regulators the necessary flexibility to consider several important factors prior to closing an institution.

It is important to note that Senator Kerry, Chairman of the Foreign Relations Subcommittee on International Terrorism and Narcotics, and Senator McConnell, the Ranking Republican, advocate charter revocation in a recent report, but most importantly they recommend that the Federal bank regulators consider the revocation for money laundering violations to the extent that the operational integrity and viability of the institution is compromised.

Thus, the ABA supports the main policy thrust behind S. 2327. We are especially supportive of the provisions that protect persons that acquire or succeed to the interests of an institution which has violated the money laundering statutes or currency reporting laws, as long as the acquisition was made in good faith and not for the purpose of evading the law.

While we are generally supportive of the approach in the legislation, we are concerned about a few provisions. The requirement that revocation can occur solely for a conviction of the institution on money laundering offenses needs to be modified to require conviction of senior-level officials, as well.

In addition, the ability of an agency to permanently or temporarily remove officers or directors of the institutions who knew of the

violations of the Bank Secrecy Act committed by institution-affiliated parties is equally troubling to our institutions and our industry.

As you know, Mr. Chairman, the Bank Secrecy Act is a record-keeping and reporting statute for financial institutions. Not only has the industry filed close to 7 million CTR's, cash reporting transactions, in 1989, but the industry effort has been singled out for high praise from the government. That includes Mr. Bennett's comments to the ABA's directors as recently as last week.

The premise behind S. 2327 is to prevent financial institutions which have been criminally convicted from continued operations under certain defined circumstances; and the removal of officers for recordkeeping violations, is an overreaction to a problem that can be addressed through civil penalties.

We are appreciative of the steps that the committee has taken to lessen the impact of this section requiring the agency that is conducting the removal to consider whether the officer or the director took appropriate action to stop or prevent the reoccurrence of the violation and not to allow the removal if the violation was inadvertent or unintentional.

There can be no disagreement with the removal of a bank official who aids in structuring a financial transaction so as to avoid reporting. Removal for BSA violations however may not be warranted.

Mr. Chairman and members of the committee, we are pleased at the overall provisions of S. 2327 and support your efforts on a workable solution to charter revocation. The committee should also consider several money laundering-related provisions in the Senate crime bill, S. 1970 and S. 1972.

As you know, these proposals include provisions from H.R. 3848 and the ABA recommended them to the House Banking Committee. These provisions in the Senate crime bill warrant approval. We support that Congress be kept apprised of the utility of information submitted to the Government. Even though there is a general agreement within the industry on the need for extensive cooperation in the war on drugs, there is a good-faith skepticism on the utility of all this information submitted to the Government.

There is a final provision that warrants attention and action by this committee. Now is the time to consider a safe harbor protection for the financial institution as it is contained in S. 1970 and S. 1972 and S. 3848.

I will now turn to a discussion on these important provisions:

One outstanding concern of the banking industry is the level of adequate protection from criminal and civil liability for reporting transactions that are deemed suspicious to proper law enforcement activity.

In addition, as this committee knows, there is a concern that institutions should have the ability to refuse business within individuals or corporations who may reasonably be suspected of engaging in illegal activity. Public policy plainly requires that financial institutions take aggressive action toward potential money laundering, and the American Bankers Association completely supports this policy.

However, we believe that now is the time for Congress to review the possible avenues that may be expanded to give good corporate citizens the needed protection for their support they are giving law enforcement. There is a history of safe harbor protections long supported by certain Federal agencies. The policy is simple: As long as a regulated entity maintains a diligent, serious compliance effort and fully reports all legal violations, the entity should not face prosecution or civil liability.

In addition, we advocate reward moneys for banks who report information leading to money laundering prosecutions. Financial institution officials have long advocated receiving reimbursement for the cost of certain record disclosures. ABA recommends this committee consider an amendment to require financial institutions be reimbursed for their costs in assembling information or providing records of their customers regardless of the customers legal status.

The ABA supports the final version of H.R. 3848 that unanimously passed the House on April 26. The provisions relating to charter revocations are a workable compromise that brought fairness and due process to a difficult issue. ABA appreciates the concern of both Houses of Congress on these difficult policy issues.

It is encouraging that the institutions affected by this bill will receive ample opportunity to plead their case.

Section 14 of H.R. 3848 is an extremely important provision that will give the states access to CTR's filed by their institution. This requirement will negate the need for state laws that mandate duplicate reporting by banks, and the ABA certainly welcomes this proposal.

Mr. Chairman, the American Bankers Association has long been involved in money laundering deterrence since the mid-1980's. Whether it has been testifying before Congress or State legislatures, commenting on regulations, or training bank employees, our Association is committed to active cooperation in this war to stop the laundering of monies of drug dealers through the financial institutions.

Our Association will soon release a survey on the bankers' responses to compliance under the Bank Secrecy Act and general money laundering deterrence. Whereas, many banks could not easily or precisely quantify their costs of complying with the Bank Secrecy Act, it appears that the industry has spent over \$129 million complying with the BSA in 1989. Our survey experts feel that the number is probably an underestimate, but it does give an indication of the resources being dedicated to slowing down the drug money laundering.

Mr. Chairman, deterrence works if the risks are raised significantly. We believe the risks involved in attempting to launder money through financial institutions are great, and the reporting of suspicious activities is on the rise.

We were given a copy of Senator D'Amato's bill late last evening and I just have a few comments.

The CHAIRMAN. Please. We would like to hear them.

Mr. MELNIKOFF. First, we appreciate the modifications in the drafts on the money laundering transmitters. We feel, however, that the definition of "financial institutions" is extremely broad

since it includes the Postal Service and other businesses that will to be covered under "money transmitters."

As with the registration draft, certain businesses who also sell money orders—i.e. supermarkets—and other entities would also have to comply with this, and I think we may be increasing that scope to such a degree that it is conceivable it might not be manageable. But whatever the operational problems are, I want to assure everyone on this committee that the industry stands tall and will work out whatever problems need to be worked out.

Treasury's authority to issue know-your-customer regulations is not a problem, really. The ABA is working on this and has been for some time, and many institutions already are taking steps when opening new accounts to secure tax ID numbers, corporate resolutions, and things of that nature that would certainly enhance our ability to know our customer. So we are working full-speed ahead.

Nondisclosure of targeting orders is not a problem. We support that, and we have told our members not to disclose, and they support that.

Wire transfers: ABA supports Treasury's authority to issue regulations. We are opposed, however, to any more legislation along that line. We will be only too happy to set up tours for this committee to visit various wire rooms and various transfer centers in the hopes of everyone on the committee having a good understanding of what the industry goes through in this process.

Transfer records without notice is not something we would care to comment on, and we leave that in the hands of the agencies that need that.

On banks transferring actual records, all of us believe that the RFPA is a procedural statute. If we change the requirement that no records without Government request, that appears to be a major policy change and should be reviewed. A good-faith defense obviously is very, very important to us and we would be happy to expand on that at your request and convenience.

That is my testimony, sir.

[The complete prepared statement of Boris F. Melnikoff follows:]

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STATEMENT

OF

BORIS F. MELNIKOFF

ON BEHALF OF

THE AMERICAN BANKERS ASSOCIATION

ON

S. 2327, S. 1970, S. 1972, H.R. 3848

AND MONEY LAUNDERING DETERRENCE EFFORTS

BY THE COMMERCIAL BANKING INDUSTRY

BEFORE THE

SENATE BANKING COMMITTEE

OF THE UNITED STATES SENATE

MAY 18, 1990

Mr. Chairman and members of the Committee, I am Boris F. Melnikoff, Senior Vice President of First Wachovia Corporation in Atlanta, Georgia, Vice Chairman of the American Bankers Association's Security and Risk Management Executive Committee and Vice Chairman of the American Bankers Association Money Laundering Task Force. The combined assets of our members comprise approximately 95 percent of the industry total. ABA members range from the smallest to the largest banks, and close to 85 percent of them have assets of less than \$100 million.

Mr. Chairman, this Committee contains many of the Congressional leaders in the fight against money laundering. Committee members and their staffs have devoted considerable effort to developing workable, cost-effective legislation, and we want to express our appreciation to you and your staffs for that effort. Mr. Chairman, you, Senator Garn, Senator Graham, Senator D'Amato, and Senator Kerry, and many others are to be commended. As you know, Senator Kerry has also been a real leader in his capacity as a Subcommittee Chairman on the Foreign Relations Committee.

The American Bankers Association welcomes the opportunity to discuss S. 2327, the recently passed H.R. 3848, other proposed legislation on money laundering and the report of the Financial Action Task Force on Money Laundering. The U.S. banking industry applauds all efforts to prevent our

financial system from being used as havens for drug dealers. However, there is a need to carefully consider all proposals in order to insure that we are not unduly hindering the U.S. financial system, while adding little to our country's law enforcement efforts. It is in this regard that we offer the following comments.

S. 2327

Mr. Chairman, I shall comment first on the "Depository Institution Money Laundering Amendments Act of 1990" (S. 2327), introduced on March 22, 1990. As indicated upon introduction, the intent of S. 2327 is to give the appropriate Federal depository institution regulatory agencies the power to revoke charters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or currency transaction reporting offenses.

Most importantly, the co-sponsors have indicated that this bill "will give law enforcement a new tool in the war on drugs,... [but]... [i]t will not punish a community which relies on the bank for its source of loans and contributions to the local economy. [nor will it]... penalize a bank for the actions of low-level employees or officials acting

beyond the scope of their employment. [and] [i]t will not place additional administrative burdens on banks."¹

The banking industry appreciates the work of this committee in fashioning a bill that addresses our concerns without proposing solutions that would fail to give the regulators the necessary flexibility to consider several important factors prior to closing an institution. It is important to note that Senator Kerry (D-MA), Chairman of the Foreign Relations Subcommittee on International Terrorism and Narcotics, and Senator McConnell (R-KY), the ranking Republican, advocated charter revocation in a recent report² but recommended that Federal bank regulators "consider revocation" for a money laundering violation "to the extent that the operational integrity and viability of the institution is compromised."³ Thus, the ABA supports the main policy thrust behind S. 2327. We are especially supportive of the provisions that protect persons that acquire or succeed to the interests of an institution which has violated the money laundering statutes or currency

¹Cong. Rec. S3109 (March 22, 1990 Vol. 136 No. 32.

²Drug Money Laundering, Bank and Foreign Policy: A Report on anti-money laundering law enforcement and policy based on oversight hearings before the Senate Foreign Relations Committee and hearings before the Senate Banking Committee, p. 79.

³Id at 79.

reporting laws as long as the acquisition was made in good faith and not for the purposes of evading the law.

However, while we are generally supportive of the approach in the legislation, we are concerned about several provisions. The requirement that revocation can occur solely for a conviction of the institution on the money laundering offenses needs to be modified to require convictions of senior level officials as well.

As we pointed out in the House Banking Committee:

Theories of corporate criminal liability permit convictions of a corporation even though the illegal activity resulted from low-level employees acting outside the scope of their employment, unknown to management and even contrary to strictly enforced corporate policies. Thus, a depository institution could automatically lose its charter even in the illegal activity was undertaken by, for example, a branch manager against the corporate policy.

Therefore, while the regulators must consider the degree of involvement of senior management under S. 2327, a revocation hearing can still be scheduled based only on the conviction of the institution. The potential result is that customers may decide to withdraw their deposits because of the

hearing. The House considered this potential problem and allowed only convictions of the institution and senior management to result in a charter revocation hearing. We urge the Senate to consider that approach.

In addition, the ability of an agency to permanently or temporarily remove officers or directors of an institution who "knew" of violations of the Bank Secrecy Act (31 U.S.C. 5311 et seq.) committed by "institution-affiliated" parties is equally troubling to our industry.⁴ The bill also permits removal of persons charged with, or convicted of violating the money laundering statutes (18 U.S.C. 1956 and 1957) and/or criminal violations of the Bank Secrecy Act.

⁴There are three categories of individuals and entities covered by the term "institution-affiliated" parties:

The first category is (a) any director, officer, employee or committee members (for credit unions) of controlling stockholder (for all other financial institutions) of, or agent for, an insured institution or (b) any person who has filed or must file a change-in-control notice. For this category, the agency need not show "participation in the conduct of the affairs" of the institution.

The second category is any shareholder (other than a controlling shareholder or a holding company), consultant, joint venture partner, and any other person(s) found by a banking agency (by regulation or on a case-by-case basis) to have participated in the conduct of the affairs of an insured institution. For these persons, the evidence of a violation may also demonstrate participation.

The third category is any independent contractor, including specifically any attorney, appraiser, or accountant.

As you know Mr. Chairman, the Bank Secrecy Act is a recordkeeping and reporting statute for financial institutions. It is under this statute that the authority is given to the Treasury Department to require the reporting of cash transactions over \$10,000. Not only has the industry filed close to seven million cash reports or (CTRs) in 1989, but the industry's effort has been singled out for high praise from the government⁵.

In addition, the New York State legislature in a report from a recent hearing on money laundering stated:

Bank compliance with money laundering laws and regulations is at an all time high, and represents the cornerstone of efforts to detect and stop criminal activity.⁶

⁵In fact, Attorney General Richard Thornburgh singled out the banking industry for its tremendous work in this area. The Attorney General told an audience at the October 26, 1989 joint conference of the American Bankers Association-American Bar Association that the work of the Justice Department "has been immeasurably helped by your own increased attention to your obligations to report all financial transactions over \$10,000 to Treasury. We are grateful for your diligence, which has aided us in catching these criminals. I recognize your sincere concern and commend your willingness to cooperate."

⁶See: Financial Institutions And the Problem of Money Laundering: A Guide to State and Federal Action. A report by Senator Hugh T. Farley, Chairman, New York State Senate Committee on Banks, New York State Senate Select Committee on Interstate operation. April 1990, p. 9.

Therefore, it is troubling that a provision in S. 2327 would remove an officer not for his own violation, but for knowing that a violation of the cash reporting offenses has occurred by an institution-affiliated party. It is unclear what standard of knowledge is to be applied to the officer or director in Section 4. As this committee is well aware, there exist varying levels of knowledge in the courts, from "actual knowledge" to lesser levels of scienter (or state of mind). In addition, is the officer or director subject to removal simply because he learned of a violation, or must there be some connection to the violator and the underlying violation?

The House version (H.R. 3848) would remove an institution-affiliated party for a violation of 31 U.S.C. 5324 (structuring transactions to avoid reporting) as well as the criminal money laundering offenses but would not remove an official for the violations committed by his subordinates.

The Bank Secrecy Act (BSA) encompasses compliance procedures, exemption requirements and other "regulatory" issues. The premise behind S. 2327 is to prevent financial institutions which have been criminally convicted from continued operation under certain defined circumstances. Removal of officers for recordkeeping violations is an overreaction to a problem that can be addressed through

civil penalties. We are appreciative of the steps the committee has taken to lessen the impact of this section by requiring the agency that is conducting the removal to consider whether the officer or director "took appropriate action to stop or to prevent the recurrence" of a violation and to not allow removal if the violation was inadvertent or unintentional.

We suggest that the House version should be considered the more proper course for two reasons. First, the removal would occur for the individual who violated the law. Secondly, 31 U.S.C. 5324 is a criminal violation, not a civil penalty reporting violation. There can be no disagreement with the removal of a bank official who aides in structuring a financial transaction so as to avoid reporting. Removal for BSA violations is not warranted.

Thus, a more prudent course would be to eliminate the statutory provisions allowing removal for mere recordkeeping violations.

Mr. Chairman and members of the committee, we are pleased at the overall provisions in S. 2327 and support your efforts on a workable solution to charter revocation.

OTHER PROPOSALS

This committee should also consider several money laundering related provisions in the Senate Crime Bill (S. 1970 and S. 1972.) As you know, these proposals were included in H.R. 3848, and ABA recommended to the House Banking Committee that these provisions in the Senate Crime Bill warranted approval.

Specifically, these provisions, contained in the crime package introduced by Senator Biden (D-DE), would among other things require the Department of Treasury to report to Congress the use made of currency transaction reports (CTRs).

In addition, Title V of the bill requires a summary of criminal indictments in the previous fiscal year which "resulted in large part, from investigation initiated by analysis of CTRs and a summary of criminal indictments resulting from investigations initiated by information regarding suspicious financial transactions provided voluntarily by financial institutions." We support the requirement that the Congress be kept apprised of the utility of information submitted to the government. Even though there is general agreement within the industry on the need for extensive cooperation in the war on drugs, there is

good faith skepticism on the utility of all information submitted to the government.⁷

We know that the Financial Action Task Force did not unanimously adopt a cash reporting structure for its recommendations and that the Drug Enforcement Agency (DEA) has raised questions about the utility of reporting. While we are not adding our voices to the list of those who are opposed to the emphasis on reports, it is clear that the system is not above review. The banking industry stands ready to assist the government in an objective analysis of the proper role of cash reports and reports of suspicious transactions in the efforts to deter money laundering.

⁷Former Deputy Assistant Secretary for Law Enforcement at the Treasury Department, Gerald L. Hilsher told an audience in September, 1988 that:

In my opinion, the Treasury Department has done a poor public relations job in not telling the private sector what the Treasury Department is doing with this information and what kinds of cases the Treasury Department is making. The Treasury Department needs to keep better statistics because although Title 31 convictions are not the only measure of BSA effectiveness, we have not brought forth statistics on other aspects of BSA utility. The federal government has good examples of individual cases brought as a result of BSA compliance, but the Treasury Department, for example, can't state the degree to which BSA compliance has resulted in increased tax revenues. One of the recommendations that I will be making from this roundtable is to do a better job of tracing Title 31 involvements in criminal and tax cases, so that next year, perhaps, we can bring these statistics to the financial community to show that we do have a program that makes sense.

We also enthusiastically support the provisions in S. 1970 and S. 1972 that provide for an "advisory group on reporting requirements." This provision, first developed by Senator Kerry in a bill introduced on May 18, 1989, was also passed by the House in H.R. 3848 and will go a long way toward giving the private sector the ability to provide guidance on fine tuning current reporting laws.

The concept of an advisory group has already been accepted by the Administration in the form of a group established by the White House Office of National Drug Control Policy. This office, headed by Dr. William Bennett, has created a Financial Targeting Group which will be comprised of banking industry and government officials who deal with money laundering deterrence. This is an excellent opportunity for the private sector to work with the government on devising joint strategies on financial transactions. ABA is a part of this group through three representatives, and we will have our first meeting in June. We are pleased that Congress is also considering this approach. The New York State Legislature is also considering this approach in a recently introduced bill that would establish an Anti-Money Laundering Advisory Board within the New York State Banking Department to "provide a structured forum for reviewing and

evaluating the numerous issues which exist in regard to the problem of money laundering."⁸

There is a final provision that warrants attention and action by this committee. Now is the time to consider "safe harbor" protection for financial institutions as is contained in S. 1970, S. 1972 and H.R. 3848. I will now turn to a discussion of that important provision.

Protection From Civil and Criminal Liability
for Good Faith Activity

With the myriad of laws and regulations placed on the financial industry for money laundering deterrence, it is critical that there be protection for actions taken by institutions doing their part in the war on drugs.

One outstanding concern of the banking industry is the level of adequate protection from criminal and civil liability for reporting transactions that are deemed suspicious to the proper law enforcement activity.

In addition, as this committee knows, there is a concern that institutions should have the ability to refuse business

⁸New York State Report at 99.

with individuals or corporations who may reasonably be suspected of engaging in illegal activity.

Banks now find themselves in a position of having to monitor customer transactions, prepare and file currency transaction reports, report suspicious criminal activities, avoid participation (directly or indirectly) in structuring money laundering or receiving the proceeds of criminal activities. By following the letter and spirit of these new laws and regulations, banks are in the untenable position of complying as "good corporate citizens" while being subjected to potential lawsuits for privacy violations, defamation, breach of contract and lender liability.

For example: a bank reports a customer for possible money laundering; (1) if the bank continues to do business with the customer, it faces the possibility of violating the Money Laundering Control Act for doing business with a suspected money launderer; OR (2) if the bank refuses to do business with the customer financially, it faces a lender liability suit with the information it reported being used against it. In those instances where banks are cooperating in government law enforcement efforts, it is incumbent upon the government to protect the banks from such liability.

There is now a distinct possibility that well-run financial institutions will face criminal and civil liability because

of the lack of adequate protection under the law. Our members face criminal liability if they fail to uncover money laundering or if they uncover suspected money laundering and actually report it. Public policy plainly requires that financial institutions take aggressive attitude toward potential money laundering, and the American Bankers Association completely supports this policy. However, we believe that now is the time for Congress to review possible avenues that may be expanded to give good corporate citizens the needed protections for the support they are giving law enforcement.

There is a history of "safe harbor" protections long supported by certain federal agencies. The policy is simple: as long as the regulated entity maintains a diligent and serious compliance effort and fully reports all legal violations, the entity should not face prosecution or civil liability.

Senator Bob Graham (D-FL), of this Committee, recognized a need for protection for passenger carriers and was instrumental in getting passed a safe harbor provision for the carrier industry in the 1988 omnibus drug bill (P.L. 100-690). That provision gives passenger carriers the presumption of meeting the test of the highest degree of care and diligence required under law and states the circumstances under which the carrier is not subject to

penalty or seizure. The law provides that the carrier is not subject to penalty if drugs are found on an aircraft or sea vessel that they may own or operate or in the cargo they carried, "if the participating passenger carrier establishes at an oral presentation that the passenger carrier was not grossly negligent nor engaged in willful misconduct, and complied with the applicable procedures established in the regulations." (P.L. 100-690 Section 7369.)

The Securities and Exchange Commission (SEC) adopted a safe harbor program for dealing with the misuse of corporate funds, such as illegal political contributions, kickbacks, and payments to individuals and officials overseas. The SEC implemented a voluntary compliance program to the effect that, if a corporation conducted its own investigations and then remedied its problems, the SEC would give credit to the corporation when it was deciding whether to pursue an enforcement action.⁹ More recently, the SEC advocated the use of a safe harbor in the context of the Bank Secrecy Act. In the attached comment letter to the Department of Treasury, the SEC recommended a "safe harbor be provided in your [Treasury's] regulations for firms that have developed and effectively implemented procedures reasonably designed, in light of the size, sophistication and structure of the

⁹31 Bus Law. 1279, 1281 (1976).

firm, to uncover multiple, same day transactions." The SEC went on to point out that "this approach will encourage more effective surveillance of currency transactions by financial institutions while providing those firms protection against liability where they have implemented good faith procedures."¹⁰

In addition, the American Bar Association's Criminal Justice Section has submitted a recommendation to the ABA's House of Delegates that the United States "adopt prosecution policies to encourage compliance with the Bank Secrecy Act and the Money Laundering Control Act by establishing guidelines and standards governing prosecution of financial institutions" (see attached).

Finally, the recent publication of the G-7 Financial Action Task Force Report on Money Laundering confirms the need for a safe harbor on the international level. Recommendation 16 of the report states:

If financial institutions suspect that funds stem from criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities. Accordingly, there should be legal

¹⁰ See, SEC letter to Jonathan Rusch (March 20, 1987).

provisions to protect financial institutions and their employees from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report in good faith, in disclosing suspected criminal activity to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.¹¹

These are just some examples of the support for the "safe harbor" concept. The House has already passed such a provision. According to the House Banking Committee:

The Committee is concerned that financial institutions have been reluctant to report suspicious transactions to law enforcement authorities because of concern for potential civil liability resulting from the filing of the report. Financial institutions are also reluctant to cease doing business with customers whom they suspect are engaged in illegal activities out of concern for liability to those customers. In one case, a court held the bank civilly liable for terminating a

¹¹See, "Synopsis of the Forty Recommendations of the Report," Financial Action Task Force.

business relationship with a customer, even though the bank had been told (erroneously) by Federal law enforcement authorities that the customer was engaged in illegal activities.

In order to encourage financial institutions to report suspicious transactions and to encourage financial institutions to terminate relationships with customers who may be engaged in illegal transactions but who have not yet been charged with any offense, the Committee amends the Right to Financial Privacy Act to provide an exemption from civil liability for any institution which, in good faith, files a suspicious transaction report or who refuses to do business with a customer that the institution has in good faith reported.

The Committee emphasizes that this exemption from liability applies only when the referral has been made in good faith. It does not apply to the filing of a referral simply as an attempt to evade liability for an otherwise impermissible purpose or motive.

The Committee intends "good faith" to mean that the report has been filed with an honesty of intention,

observing the reasonable standards of fair dealing in filing the report.¹²

The American Bankers Association recommends passage of the provisions in S. 1970 and S. 1972 as well as an expansion of this necessary proposal in several ways. First, the Justice Department should be encouraged to adopt a prosecution policy that takes into consideration the level of management from which the money laundering violation occurred, the compliance program of the institution, the extent of cooperation from within the institution. This concept has already been accepted by the House when it passed H.R. 3848 in relation to the factors that must be considered by the regulators prior to the revocation of a bank's charter (whether new procedures have been implemented to prevent new money laundering offenses and the degree of cooperation with law enforcement). Second, ABA recommends that the Right to Financial Privacy Act be expanded to provide protection from civil suits from corporations, individuals and potential customers. There is a suggested amendment in the appendix to our testimony. Mr. Chairman, the time has come to protect an industry that is willing to be part of the frontline on the war on drugs.

¹²House Report 101-446, pgs. 33-34.

We will now turn to Senator D'Amato's recent draft on money transmitters.

THE MONEY LAUNDERING ENFORCEMENT ACT OF 1990

Mr. Chairman, we applaud the recognition by Senator D'Amato that there are other entities that must be required to do their part in the money laundering challenge. Senator D'Amato has long been an advocate of stopping the flow of drug money as evidenced by his leadership in pushing for the passage of the first money laundering law in 1986. In January, the Senator testified before the NY State Senate and Assembly Committees on Banks and soon after, the legislature introduced a bill to increase the penalty for operating as a money transmitter without a license.¹³ Since this is not solely a New York problem, Senator D'Amato has drafted a bill addressing the actions of money transmitters. The Committee has asked us to comment on the discussion draft concerning registration of money transmitters although we understand that the draft has been modified.

While we support the concept embraced by the bill, there are several major concerns with the draft. The registration of money transmitters presents severe practical problems for

¹³ Assembly bill 9221 (February 6, 1990).

the banking industry. Initially, it must be emphasized that registration of depository institutions does not appear to be the intent of the legislation. Therefore, we would recommend that there be an exemption for those entities that are already extensively regulated by the banking agencies. The definition in the draft could be read to cover commercial banks.

Secondly, the role of the financial institution in the draft seems to be that of policing the money transmitting industry. As a practical matter, the register of money transmitters may change daily. How will an institution receive current information to prepare for their obligation to not transact business with groups that are not registered? More importantly, the penalty for executing a funds transfer of an unregistered transmitter contains no scienter or knowledge requirement. Therefore reliance on the registry must be an ABSOLUTE DEFENSE to an action against an institution which transfers funds for the money transmitter.

It is also unclear how the institution would check on the registration; would it be at the account opening stage? If so, how would we handle existing customers? What about travel agencies and pharmacies, entities that may transmit funds? A financial institution employee may not know whether to check these corporate entities for registration.

We are sure that these questions and concerns can be addressed by the Committee. We are pleased to learn of another approach that would make it a violation to operate an illegal money transmitting business.

Section 6 of the draft (provisions relating to recordkeeping with respect to certain international funds transfers) parallels Section 10 of H.R. 3848 with an addition that apparently covers other entities that transfer funds internationally.

ABA remains adamantly opposed to any legislation that undermines the ability of the Treasury Department to consider wire transfer regulations without consulting with the Federal Reserve Board and without considering the cost and law enforcement usefulness of the regulations. Therefore, we are pleased that the Discussion Draft does not alter that policy.

Amendment to the Right to Financial Privacy Act (RFPA)
On Record Reimbursement

In addition to the reward monies for bankers who report information leading to money laundering prosecutions,¹⁴

¹⁴ Recommendation 7 of the Kerry/McConnell report calls
(Footnote Continued)

financial institution officials have long advocated receiving reimbursement for the cost of certain record disclosures. ABA recommends to this committee consideration of an amendment to require that financial institutions be reimbursed for their costs in assembling information or providing records of their customers regardless of the customer's legal status.

Section 3145 of the Right to Financial Privacy Act provides that a government authority shall pay to a financial institution assembling or providing financial records pertaining to a customer such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting records or data required or requested to be produced. The term "customer" is currently defined as any person who utilized or is utilizing any service of a financial institution. "Person" means any individual or a partnership of five or fewer individuals.

Financial institutions comply with many Federal requests for information concerning legal entities not included in the definition of "customer." These legal entities may include corporations, partnerships with more than five (5) partners, trusts, government agencies, and other legal entities. Such

(Footnote Continued)
for funding of Title 31, U.S.C. Sec. 5323 (the Treasury reward provision.)

compliance can be expensive and burdensome, particularly where the requests for information include numerous records and may involve a substantial amount of time searching for and assembling such records.

Furthermore, costs that are "reasonably necessary" and which are "directly incurred" in producing such information are reimbursable. Fixed costs, such as employee salaries, overhead, equipment, depreciation, etc., are still not subject to reimbursement.

Our suggested amendment would provide reimbursement for record disclosure on any entity (included in the appendix). It does not change important regulatory and other government functions that continue to be exempt from reimbursement requirements.

Section 3415 currently does not include section 3413(i) through (o), which appear to be exceptions from reimbursement under that statute. This amendment would clearly establish several of these paragraphs as exceptions from reimbursement.

H.R. 3848

The ABA supports the final version of H.R. 3848 that unanimously passed the House on April 26. The provisions relating to charter revocation are a workable compromise that brought fairness and due process to a difficult issue. ABA appreciates the concerns of both Houses of Congress on these difficult policy issues. It is encouraging that the institutions affected by this bill will receive ample opportunity to plead their case. There are several provisions we would like to comment on in addition to the views we have already expressed.

Section 13 is a provision on cash reporting exemptions that may have an extreme unintended effect on the reporting process. Since both the Senate and the House have raised concerns about the abuse of the exemption process, it is important to emphasize that the banking industry is — constantly seeking clarification of the government position on the proper use of exemptions. This section would require that exemptions be valid for only one year. If the exemptions have to be signed each year instead of current law that requires a new exemption only if the dollar amount or the nature of business changes, there will be no incentive for an institution to utilize exemptions. It is just as easy to file a CTR, and additional CTRs further burden this recordkeeping system. There is an extreme misconception that financial institutions seek exemptions.

We do not believe that the substantial increase in filed reports is in the interest of the Treasury department.

Section 14 is an extremely important provision that will give the states access to the CTRs filed by their institutions. This requirement will negate the need for state laws that mandate duplicative reporting by banks. ABA welcomes this proposal.

THE ABA RESPONSE TO MONEY LAUNDERING

Mr. Chairman, the American Bankers Association has been involved in money laundering deterrence since the mid-1980's. Whether it has been testifying before the Congress or the state legislatures, commenting on regulations or training bank employees, our association is committed to active cooperation in this war to stop the laundering of monies of drug dealers through financial institutions.

Since 1985, ABA has trained over 50,000 financial institution employees on the Bank Secrecy Act, the Money Laundering Control Act and all the applicable laws and regulations designed to solve this problem.

Mr. Chairman, the ABA would like to take this opportunity to reiterate our Statement of Principles (attached), announced in September, 1989, for the elimination of money laundering. We have contacted other financial institution trade associations to enlist their support in our efforts to completely shut down the use of our financial institutions by drug dealers.

ABA is proud to continue to accept the Attorney General's challenge to eliminate money laundering. We applaud his clarion call: "You, as leaders of the banking industry, have the opportunity -- even, I suggest, the honor -- to be among the first who can really help us close them down, for good and all."

ABA'S MONEY LAUNDERING DETERRENCE AND
BANK SECRECY ACT SURVEY RESULTS

Our association will soon release its survey on the banker response to compliance with the Bank Secrecy Act and general money laundering deterrence.

Whereas many banks could not easily or precisely quantify their cost of complying with the Bank Secrecy Act, it appears to us that the industry spent over \$129 million dollars complying in 1989. Our survey experts feel that this number is probably an underestimate, but it does give

an indication of the resources being dedicated to the slowing down of drug money laundering.

In addition, the survey confirms banker commitment to compliance policies on "knowing your customer." This result emphasizes a dedication to monitoring activity far beyond those required on reporting cash transactions. We understand that Treasury is contemplating the issuing of "know your customer" regulations. We are committed to this policy concept and will share the industry's long standing position with the government.

When the respondents were asked: In your experience, what is the most effective procedure to prevent money laundering, some of the prevalent answers included:

1. Know Your Customer;
2. Alert and trained tellers;
3. Deal only with known customers; and
4. Suspicious activity reporting.

ABA is filling these needs through training and product development. In fact, we are preparing another nationwide series of seminars for the Fall to train bank employees in 27 regions. In addition, we are preparing another two-day conference with the American Bar Association. These are just some examples of our involvement in the war on drugs. I would like to conclude with our most recent activity.

Conclusion

Mr. Chairman, deterrence works if risks are raised sufficiently. We believe that the risks involved in attempting to launder money through financial institutions are great and the reporting of suspicious activity is on the rise.

ABA has offered a Statement of Principles for U.S. financial institutions (see attached) and has dedicated communication resources to radio and magazine public service announcements (also see attached).

Finally, let me close with a statement made by the Money Laundering Task Force, created by the American Bankers Association, in a letter to William Bennett in April of 1989:

"Our members strongly believe that the government and the banking industry to work together as a team, not as adversaries in pursuing the goal of a drug-free America."

Dr. Bennett addressed our Board of Directors last week and his comments are attached.

We thank you for the opportunity to comment on this critical problem and I would be happy to answer any questions you might have.

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The Newspaper of the American Bankers Association

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Drug czar singles out ABA's anti-drug efforts

By Mark J. Burneko

Drug czar William J. Bennett heralded ABA's commitment to fighting money laundering, saying the association's cooperation has been crucial in the war against drugs.

Bennett, who met Thursday with ABA's Board of Directors, said he was "pleased with what ABA members have pledged to do" in thwarting money-laundering attempts.

"Banks are an essential part of our concern," said Bennett, director of the White House Office of National Drug Control Policy. "I am pleased with the cooperation we have seen so far and look forward to their cooperation in the future."

At a news conference following the Board meeting, Bennett singled out ABA's recent radio and print advertisements in which customers are asked for patience in filling out required cash-transaction reports. Bennett said the ads are an indication of "the degree of bankers' earnestness and seriousness" about the problem.

"Nobody, I think, can readily appreciate how complicated the business of financial transactions is," said Bennett. "To have the cooperation of the banking community is crucial to us."



William Bennett, director of the White House Office of National Drug Control Policy, shows reporters an ABA advertisement that explains cash-transaction reporting during a news conference Thursday. Bennett came to the ABA Board meeting to thank ABA for its anti-money-laundering efforts. At left is ABA Executive Vice President Donald G. Ogilvie.

dered drug profits.

"We have asked everybody to do something," said Bennett, "and I am satisfied at this point that the banking community has come forward as good citizens to pledge its support."

At his meeting with the ABA Board, Bennett praised ABA's educational and training programs, acknowledging the association's leadership role in shutting off access to banks by money launderers.

Speaking to reporters, ABA Executive Vice President Donald G. Ogilvie said that "bankers want to be — and are — part of this fight. We intend to cut off the drug dealers by shutting out the nation's teller windows to money laundering."

Bennett, who plans to meet this week with drug-enforcement leaders from around the country, said he intends to tell them that banks are succeeding in closing a conduit for laun-

AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT
TO PROVIDE EXPANDED REIMBURSEMENT FOR FINANCIAL INSTITUTIONS

Amendment to the Right to Financial Privacy Act to Provide Expanded
Reimbursement for Financial Institutions.

Amendment to the Right to Financial Privacy Act (12 U.S.C. 3401 et. seq.)

Section 3415 of the Right to Financial Privacy Act (12 U.S.C. 3415) is
amended--

(1) by inserting between the heading and the first line of the
statute the following new sentence:

"For purposes of this section, "person" shall mean any individual and
any legal entity including corporations, partnerships of any size,
unincorporated associations, trusts, government agencies and other legal
entities."

(2) by deleting on line 4 the word "customer" and inserting in

in lieu thereof the word "person."

(3) by deleting at the beginning of line 2 "3413(a) through (h) of this title," and inserting in lieu thereof the following "3413(a), (b), (c), (d), (e), (f) if reimbursement is provided by section 554 of Title 5, (g), (i), (l), (m), (n), and (o) of this title,".

Add Section 5, entitled "Right to Financial Privacy Act amendments."

Section 1103(c) of the Right to Financial Privacy Act (12 U.S.C. 3403(c)) is amended as follows:

- (1) by designating and inserting "(1)" before the opening paragraph;
- (2) in the last sentence, by inserting "in good faith" after "disclosure of information";
- (3) by adding at the end, new paragraphs numbered (2) and (3) to read as follows:

"(2) No financial institution or officer, employee, or agent thereof shall be liable under any law or regulation of the United States or any constitution, law, or regulation of any state or political subdivision for: (i) its preparation or submission of information to a Government authority which it believes in good faith it is required to prepare or submit; or (ii) its failure to notify any person or entity of its preparation or submission of information to a Government authority which it believes in good faith it is required to prepare or submit; or (iii) its refusal to do business with any person or entity which it believes in good faith would involve possible participation in an illegal or criminal activity.



AMERICAN
BANKERS
ASSOCIATION

NEWS

PUBLIC RELATIONS □ 1120 CONNECTICUT AVENUE, N.W., WASHINGTON, D.C. 20036 □ (202) 663-5000

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FOR IMMEDIATE RELEASE
(90)

NEW ABA AD CALLS FOR PUBLIC ASSISTANCE IN STOPPING FLOW OF DRUG MONEY

WASHINGTON, April 2 -- The American Bankers Association has introduced a new advertisement calling for public assistance in fighting illegal drugs and money laundering. The ad is the eighth in a series of national ABA ads themed "Why Being a Good Neighbor is Good Banking" that showcase bank community support programs.

"New federal and state regulations have been designed to make it tougher for drug traffickers to dispose of large amounts of cash," said Earl Hadlow, chairman of ABA's Money Laundering Task Force.

As a result, customers may be asked to supply personal identification and additional information relating to some transactions even if their bank has never before required such information. Banks currently file reports with the government on some six million transactions annually.

"Cooperation from our customers will help us to keep banks the first line of defense in the war against drugs," said Hadlow.

The color ad, which features the artwork of well-known cartoonist Whitney Darrow, is based on a series of ABA public service announcements which have been carried by radio stations nationwide since January. It will run in April issues of NEWSWEEK and U.S. NEWS & WORLD REPORT.

The American Bankers Association is the national trade and professional association for America's commercial banks of all sizes and types. The combined assets of its members represent approximately 95 percent of the industry total.

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Your bank needs your help to fight illegal drugs and money laundering.



America's Full Service Banks® believe that being a good neighbor is an important part of good banking.

That's why your commercial bank is working hard, in cooperation with law enforcement agencies, to keep illegal drug money out of the banking system.

New Federal and state regulations have been designed to make it tougher for drug traffickers to dispose of large amounts of cash. As a result, your bank may be asking for personal identification when you make some financial transactions—even if you've been a customer for many years. On occasion, it may be necessary to ask for *additional* information that your bank did not need before.

Should these extra measures cause an inconvenience or slight delay, please accept our apologies. With your cooperation we can help fight the drug problem more effectively.

Want to learn more about how banks are helping make the community a better place to live? Talk to a banker at your Full Service Bank.®

American Bankers Association
1120 Connecticut Avenue N.W.
Washington, D.C. 20036



America's Full Service Banks. We believe being a good neighbor is good banking!

As revised by the CJS Council
4/22/90

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association, in order to promote compliance with the Money Laundering Control Act, 18 U.S.C. §1956, 1957 and the Bank Secrecy Act (BSA), 31 U.S.C. §5322, recommends that the United States adopt prosecution policies to encourage compliance with the Bank Secrecy Act and Money Laundering Control Act by establishing guidelines and standards governing prosecution of financial institutions. The standards and guidelines should encourage financial institutions to adopt comprehensive BSA compliance programs and anti-money laundering programs and to cooperate with law enforcement authorities.

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036



MEMORANDUM

Preamble

America's bankers have been working hard to combat the illegal laundering of the profits from illegal drug transactions. In recent weeks, there have been a number of examples where individual bankers have worked with law enforcement officials to uncover money laundering schemes. In the past year, U.S. bankers have filed over six million currency transaction reports.

The American Bankers Association has taken a leading role in working with regulators, the Treasury Department, and the Congress in developing workable responses to the money laundering problem. As part of this effort, the ABA has developed the following statement of principles which it will be sending to its member banks, as well as to other trade associations representing members of the financial services industry. This statement is designed to urge all financial institutions to work aggressively to combat money laundering. The ABA believes that it is critical that all members of the U.S. financial system work together with law enforcement officials, regulators, the Administration, and the Congress to prevent the U.S. financial system from being used to launder the profits of illegal drug trafficking.

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036



MEMORANDUM

The American Bankers Association
Statement of Principles for Combating Money Laundering by
U.S. Financial Institutions

o U.S. financial institutions should continue to be at the forefront of efforts to combat the laundering of profits from illegal drug trafficking.

o U.S. financial institutions should comply fully with all laws and regulations relating to money laundering. Employees of these financial institutions should be trained in the rules applicable to reporting of transactions and to identifying possible money laundering schemes. The management of all financial institutions should indicate strong support for employee efforts to combat money laundering.

o The employees of financial institutions should report suspicious transactions or other activities to authorities when there is sufficient reason to believe that illegal activities may be taking place, consistent with basic principles of customer privacy.

o Financial institutions and their employees should work actively with law enforcement authorities when those authorities request their assistance in investigations of money laundering.

o Financial institutions should work with government institutions to develop new methods to effectively combat money laundering.

o U.S. financial institutions should work through their trade associations to encourage international cooperation and agreement on cross-border efforts to combat money laundering.

OFFICE OF
THE SECRETARY

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 20, 1987

Mr. Jonathan J. Rusch, Acting Director
Office of Financial Enforcement
Office of the Assistant Secretary
(Enforcement)
Department of the Treasury
Room 1458
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Proposed Amendments to the Bank Secrecy Act
Regulations (51 Fed. Reg. 30233 (Aug. 25, 1986))

Dear Mr. Rusch:

This letter comments on the Department of the Treasury's ("Treasury") proposed revisions to its implementing regulations under the Bank Secrecy Act ("Act"). We support Treasury's efforts to strengthen these regulations and believe that the proposed regulations address important outstanding concerns in this area.

As you are aware, there are provisions in the proposed regulations that affect broker-dealers registered with the Commission. Further clarification of certain of these provisions may lead to more efficient and effective enforcement of the Act. Members of the Commission staff have had an opportunity to discuss these considerations with you and your staff on an informal basis. We appreciate this opportunity to set forth our observations for the record.

31 CFR §103.22(a)(1) - Clarification of the multiple same day reporting requirement. The proposed amendment codifies the existing instruction on Form 4789 requiring a financial institution to report same day transactions of which it is aware that total more than \$10,000. This provision, coupled with the new structuring provision adopted by Congress in Section 1354 of the Money Laundering Control Act of 1986 (31 U.S.C. 5324), appears to comprise the Treasury's two-part policy for monitoring the flow of currency at financial institutions.

Under the proposed 31 C.F.R. 103.22, the proposed rule will require financial institutions to report transactions only where

Mr. Jonathan J. Rusch, Acting Director
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there is "actual knowledge" on the part of an employee, or where the institution's computer system presently has the ability to aggregate transactions. We believe that the proposed "actual knowledge" standard of proof will be difficult to meet. This is particularly true for major financial institutions with complex operations that divide responsibilities among employees. For example, records may include clear evidence of multiple, same day transactions but a single employee would not necessarily know of more than one of the transactions. The likelihood of a single employee having actual knowledge also is less likely where deposits are made by several persons with one account or one person with several accounts.

We are concerned that, in its presentation, the proposed rule acts as a disincentive for financial institutions to acquire the capability to track multiple same day transactions. Treasury specifically states that the responsibility to capture and report aggregate deposits is greater if a financial institution has the present capacity to do so than if they do not have such present capacity. These observations, when coupled with the statement that Treasury is not imposing any obligation to buy new technology or requiring new records to be kept, act as a clear disincentive to institutional efforts to identify patterns of multiple, same day deposits.

As an alternative, we recommend that an obligation be imposed on financial institutions to report all violative multiple day transactions but that a safe harbor be provided in your regulations for firms that have developed and effectively implemented procedures reasonably designed, in light of the size, sophistication and structure of the firm, to uncover multiple, same day transactions. For example, computer programs at financial institutions contain data on customer identification numbers (such as social security numbers) and whether currency was deposited or withdrawn. An "exception run" to match account or other ID numbers with currency in excess of \$10,000, at least for the larger financial institutions, should be encouraged. The availability of a safe harbor will also address unnecessary filings by institutions anxious to avoid violating the Act and its implementing regulations. In our experience, some broker-dealers already file unnecessary currency transaction reports out of an abundance of caution in this area. We have been told by your office that unnecessary CTRs simply reduce the accuracy of the underlying data base. We believe that this approach will encourage more effective surveillance of currency transactions by financial institutions while providing those firms protection against liability where they have implemented good faith procedures.

The second part of your Department's policy appears to be directed at the new "structured transactions" violation. As you

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know, our examinations have on occasion uncovered patterns of transactions where cash deposits of just under \$10,000 are made over a period of days or weeks thus avoiding the reporting requirement. It appears that these patterns may evidence what are now called "structured transactions." Recent amendments to the Act make it a violation of Section 5324 of the Act to structure a transaction to evade the Act's reporting requirements.

The Treasury's proposed regulatory scheme in this area, however, imposes a reporting obligation only for same day transactions. In our view, the structured transaction provision, §5324, without some sort of complementary reporting obligation for multiple day transactions, is unlikely to achieve the regulatory ends sought by Congress in this area. It is unrealistic to assume that periodic, routine examinations of financial institutions will uncover structured transactions made over a period of days without the expenditure of considerable resources.

Accordingly, we recommend that Treasury adopt a rule that would require firms to aggregate and report transactions by customers over a period of days, subject to the same sort of safe harbor proposal we have suggested for the single day reporting obligation. We believe that explicitly requiring firms to aggregate and report currency transactions over a period of time would make it more difficult for criminals to launder money and would take financial institutions out of the business of second guessing their customers. Of course, structuring outside of a time period established by Treasury rule would still be possible and would be punishable under the structuring provision §5324. Establishing an affirmative obligation on financial institutions, however, would clarify the duties of regulated entities and would establish objective standards which compliance examiners could use to check patterns on a routine basis.

We believe these regulations could take into account distinctions in size, sophistication and complexity of financial institutions subject to the Act in order to minimize the cost of compliance. In particular, the safe harbor provisions could be crafted in a manner specifically designed to minimize the marginal cost of compliance imposed on regulated entities. For example, if a firm already has in place a computerized system that has (or can be programmed or adapted to have) the capability of tracking multiple deposits within and across days, then it may be reasonable to expect that such a firm will monitor structured transactions made over a period of days or weeks. However, if a firm has no such system, the regulations should not be interpreted to require substantial expenditures to install a system that would not otherwise be used. The provision of a safe harbor will alleviate regulatory confusion and costs otherwise associated with trying to comply with the proposed regulations.

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31 CFR §103.11(b) - Definition of a broker or dealer - application to government securities. The Commission's rule for ensuring broker-dealer compliance with the Act, Rule 17a-8, does not apply to government securities brokers and dealers because the section of the Securities Exchange Act under which this rule was adopted is not applicable to government securities brokers and dealers. Accordingly, in order to ensure that the securities industry's self-regulatory organizations can examine for compliance with the Bank Secrecy Act, Treasury should adopt a counterpart to Rule 17a-8 for government securities brokers and dealers under the rulemaking authority it has been granted by Congress in §15C of the Securities Exchange Act.

31 CFR §103.11(n) - Definition of a "transaction account." This definition, which refers to "money market accounts and similar accounts," does not appear to include money market funds (a type of security held by brokers-dealers for the account of customers). Our review of the rules also indicates that the term is not used in provisions that apply to broker-dealers registered with the Commission. If you intend to have money market funds covered by the term "transaction account" clarification is needed.

We are hopeful that the preceeding comments will be helpful to you in your further analysis of the implementing regulations under the Act. Please let us know whether the Commission's staff can be of help to you.

Sincerely,


Jonathan G. Katz
Secretary

The CHAIRMAN. Very good.
Ms. Sweeney.

SUSAN W. SWEENEY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, DEAK INTERNATIONAL, LTD., NEW YORK, NY

Ms. SWEENEY. Thank you, Mr. Chairman, members of the committee:

I appreciate this opportunity to appear today to present an overview of current and proposed regulations as they affect the non-bank United States money transmitters industry.

Deak International, one of the Nation's oldest and largest non-bank foreign transmitters, supports laws that protect our customers, prevent abuse of our facilities, and provide law enforcement with valuable information for their use. Accordingly, we have an aggressive and pro-active compliance program.

In order to comply with the letter of the law, we train our employees individually through written manuals and seminars to recognize reportable and recordable transactions. We have branch office level compliance officers reviewing every transaction we do ticket by ticket to make sure we did not miss anything.

We have internal examinations, and indeed we even sometimes give written tests to make sure our people know what they are supposed to know.

We are now improving our computer system to aid our employees in taking information and to improve our central monitoring. Beyond this, which we think adequately covers our duties under the letter of the law, we address the spirits and goals of these laws.

We voluntarily take name, address, and identification in many cases where it is not required by law. We do not accept U.S. dollars street money in amounts of more than \$2500, except in very limited cases of proven legitimacy. We screen incoming payments split into under \$10,000 segments to make sure they were legitimate. We have a Smurfer watch, and if we see them we call CID. It is rare with our company, but when it happens we let the Government know.

We endeavor to screen our repeat-cash customers so that we will know our customers and know that they have a legitimate purpose for using our facilities. We cooperate actively with law enforcement. This is our U.S. program.

We cannot ever completely eliminate human error, nor can we ever get 100 percent smarter than the crooks, but we think we are doing in this country, what we can to aid in the effort. This committee might be interested to know that we have a similar voluntary program in Canada where we are the only transmitter to sit on the joint private sector government money laundry advisory committee to the Ministry of Finance.

Deak International is but one member of the domestic nonbank industry. The details of this industry are outlined in my prepared remarks. A few points that I would like to bring directly to the committee's attention this morning are:

It should be kept in mind that this industry serves a vital and widely diverse section of the market which is not necessarily otherwise reached. This ranges from helping someone send funds home

to a less-developed country, and helping them in their own language, to helping our merchants purchase goods abroad for sale here and, perhaps more importantly, helping collect amounts due them from abroad; to helping our foreign visitors and tourists change funds so that they can proceed with their daily affairs here.

Most of the members of this industry are very small. This ranges from many mom and pop stores at the local level to a limited number of national firms. Even the national members tend to be fairly small businesses.

On the domestic side, we have a limited number of national money order and traveller's check companies, a number of local money order companies and, as has been mentioned, thousands of traveller's check sales agents and money order sales agents.

On the foreign side—and this is important when we get to talking about how we regulate these people—we have found that almost all entities involved in international transmissions do four things: they exchange currency; they handle international transmissions; they cash and sell traveller's checks; and they handle foreign check cashing and collection.

Currently, 42 of the States regulate some portion of this business. Because of the very, very strong consumer protection justifications, check-selling is the focus—because in these cases, the check issuers and sellers are taking people's money with a promise to pay at a later time. The details of how these regulations work and the consumer protection provisions are contained in my prepared remarks.

There is a very marked trend which started about 5 years ago toward more stringent and broader regulation. It should be noted that there are enough States actively regulating those who are licensed that the national companies in this business, and most of the regionals, are very closely supervised and audited by State regulators.

It is good to know that these more active States do include most of our major commercial centers.

On the Federal side, all money transmitters are subject to the CTR, and if they are sending cash and/or monetary instruments abroad, the 4790. In addition, the traveller's check sales agents and the money order sales agents who are exempt from the CTR, file the 8300.

We also have extensive recordkeeping requirements already in place from Treasury. In the case of the foreign currency dealers who are also the check cashers and, by economics of the business, most of the international transmitters, we are required to take customer identification on all over-\$1,000 cash-for-cash exchanges. We are required to take and keep records on all extensions of credit, regardless of the amount. We are required to keep all of our bank records, and all of our daily work records. We are required to have a system of records adequate to prepare an accurate balance sheet and profit and loss statement.

Those rare nonbank institutions that maintain customer accounts of some type must also keep know-your-customer records similar to banks. Of course all of these institutions are also subject to the title 18 structuring, false filing, and money washing penalties.

What we are expecting to see at the State level is increased unilateral activities on various States' behalf to broaden and deepen—make more in-depth—their regulation. We have seen in the last year the formation of the Money Transmitters Regulators Association, a voluntary group in which most States are participating, which is sharing information to lead to better and more uniform law and, on examinations and the like, to conserve State resources.

At the State level, we do need more uniform laws. Given the number of States involved, we need more simple laws and more single licensing laws as the number of licensed activities does increase. Some of the States are also addressing the money laundering issues, such as New York which carefully audits each of its licensees for this purpose, and are passing State-level money laundering statutes. We support these efforts.

We do ask that where they specifically address reporting and recordkeeping requirements, that they do not vary from the Federal requirements. If they should do this, they are going to make a compliance nightmare for us, because we cannot handle the Federal requirements plus 50 different versions of State-level reporting.

On the Federal level, we support S. 2651's criminalization of violations of the State licensing laws. None of us want the illegal in the business. We do ask that it be kept in mind the difference between those who refuse to follow our laws and are consumer protection and money laundering problems, and those who are making a good-faith effort to cope with up to 42 different legal systems.

We see no reason why whatever wire and payment order recordkeeping, which is going to come, should not apply to nonbanks as it applies to banks. We support that.

We do ask that it be kept in mind that a majority of our customers are not account customers. We have to work harder and in different ways to get to know them.

We would also ask that Congress take a look at safe harbors for the nonbanks. The Right to Financial Privacy Act applies, for the most part, only to banks. It is also very technical in nature. We need the ability for that mom and pop store which sees something they do not like to be able to get on the phone, call CID, tell them what they saw and heard without fear of liability from any source within the bounds necessary to prevent abuse.

On the anti-money laundering regulation authority for the Treasury, we support that. We have done quite a bit ourselves. We think that legitimate institutions ought to. However, we hope that what regulations do come down allow us a great deal of business flexibility to address these issues each in our own way with what makes sense to us and our customers, and that they also keep in mind the nature of our nonaccount customer businesses.

We want to help. We will be very glad to meet with the committee's staff, or any other regulators who we can assist.

This concludes my prepared remarks, and I would appreciate any questions.

[The complete prepared statement of Susan W. Sweeney, Esq. follows:]

STATEMENT
OF
SUSAN W. SWEENEY, ESQ.
SENIOR VICE PRESIDENT, GENERAL COUNSEL
DEAK INTERNATIONAL LIMITED

on

NON-BANK MONEY TRANSMITTERS

Before the

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

MAY 18, 1990

SUMMARY OF STATEMENT

1. Deak International: Deak International, one of the nation's largest non-bank foreign transmitters, has an aggressive, pro-active Bank Secrecy Act compliance program which includes employee training, written manuals, branch-level compliance officers, screening of repeat cash customers, alerting authorities to suspicious activity and refusal to accept large sums of street money or unexplained split payments.

2. Overview of Money Transmission Industry: Transmitters range from local "mom and pop" money order companies to international banks; the non-bank transmitters often specialize in services and in market segments which are not prime businesses for many banks. Funds are transmitted domestically by non-bank transmitters, by money order, travelers check, wire, and payment order. Transmissions to foreign countries, generally in foreign currency, may be made by travelers check, wire, draft, and payment order. Foreign transmitters generally exchange currency, sell and cash travelers checks, issue foreign bank drafts and wires and collect or cash foreign checks. Some also offer payment orders. As in the domestic market, the individual characteristics of each type of payment determine its use.

3. Industry Economics: Transmitters pay their overhead and make their profits from service charges, interest on float and, in the case of foreign transmitters, the buy-sell spread on the sale of currency. Prices are subject to a high degree of intra-industry competition.

4. Industry Members: Virtually all banks play some role in the domestic transmission market; many also offer at least limited foreign exchange or transmissions. Non-bank transmitters include thousands of travelers check and money order sales agents, a number of local money order companies and foreign transmitters, and a limited number of national and regional firms. Most non-bank industry members qualify as small businesses.

5. Current State Regulation: The majority of states license issuers and sellers of money orders, travelers checks and drafts to ensure consumer protection. Some states also license wires and/or all forms of international transmissions. State regulation, focusing on consumer protection issues, has been and is continuing to increase. This includes increased enforcement of existing laws against the unlicensed. Enough states actively regulate so that all national, most regional and a portion of local licensees are closely monitored.

6. Current Federal Regulation: All transmitters are subject to the Bank Secrecy Act reporting and recordkeeping requirements and the Title 18 criminal penalties for money laundering, false filing and structuring. Unlike banks, non-bank transmitters are seldom exempt from the Bank Secrecy Act reporting requirements. Travelers check and money order sales agents exempt from Title 31 reporting are required to file Form 8300. Foreign exchanges, check cashers and most international transmitters are also subject to extensive recordkeeping requirements. The IRS is conducting periodic compliance examinations as are a limited number of states such as New York. At least where foreign transmitters are concerned, adequate reporting and recordkeeping requirements are in place or, in the case of non-cash transactions, will be coming soon.

7. Future State Regulatory Activity: State-level consumer protection regulation, including enforcement against the unlicensed, is expected to continue to increase and has wide industry support. Some states are also becoming active in the Bank Secrecy Act compliance and anti-money laundering area but there appears to be a need for additional resources before many states can become active in the anti-money laundering area. When states do become active in this area, they should not vary the already complicated federal customer identification, recordkeeping and reporting requirements since additional complexity at the state level will confuse the sales staffs and weakens central compliance programs.

8. Proposed Federal Legislation: Taking and recording of customer information on wires and payment orders is not objected to as long as a correct balance is struck between the inconvenience and cost to customers, the practicality of obtaining information and the usefulness of the information collected.

Uniform state licensing laws for international transmitters and increased enforcement against the totally unlicensed are supported. However, to the extent that these duties are delegated to the states, the best means of accomplishing these goals should be addressed by the state regulators. Further, the overall burden on the relatively small businesses which comprise the industry need to be addressed by adoption of uniform requirements and single-license provisions.

Congress is urged to adopt broad civil and criminal immunity for all persons alerting law enforcement agencies to suspect activity.

Federal criminalization of state transmitters law violations needs to distinguish between intentional wrongdoers and compliance failures due to good faith oversight or misinterpretation of law.

The proposal of H.R. 3848 requiring banks to request CTR's and Form 8300 from non-banks needs to be clarified to address the very common situation in which the non-bank will have no report to furnish since the cash deposit represents the proceeds of numerous small non-reportable transactions.

I am Susan W. Sweeney, Senior Vice President-General Counsel for Deak International Limited. Mr. Chairman, and members of the Committee, I appreciate this opportunity to testify here today on money laundering enforcement as it affects money transmitters. I have been asked to present an overview of the United States non-bank money transmission industry and its current regulation and to comment on various proposals for future regulation.

DEAK INTERNATIONAL COMPLIANCE PROGRAM

Deak International, founded in New York in 1928, is one of the nation's largest non-bank international funds transmitters, doing business in 16 states, as well as the District of Columbia and the Commonwealth of Puerto Rico, and abroad.

At Deak International, over the years we have developed an aggressive, pro-active compliance program to insure, to the maximum extent practicable, that Deak International achieves full compliance with all pertinent state and federal laws, pertaining to our funds transmission business.

To that end, Deak International's compliance program includes the following elements:

1. employee training and supervision to assure compliance with customer identification, recordkeeping and reporting requirements -- our program includes a series of separate written manuals for employees, supervisors and senior field management, new employee training, periodic reminders, seminars, internal examination, central review of all forms filed, written tests, and the like.
2. written procedures and controls to assure compliance, including documentation of all transactions and cash transfers and branch-level compliance officer review of the same, item by item, to assure all required information was recorded and all necessary reports are filed.
3. voluntarily taking name and address, and sometimes reviewing customer identification, on a wide range of transactions where not required by law.
4. our point-of-sale computer system includes reminders to our sales force on when to take customer information; we are now retooling

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our computer system to greatly expand our ability to centrally monitor many aspects of compliance.

5. customer screening of repeat cash customers to assure, to the extent possible, that we "know our customers".
6. prohibition of potentially questionable transactions (for example, we do not accept U.S. dollar "street money" in amounts over \$2500, we do not split outgoing payments into segments under \$10,000, we screen for legitimacy all incoming payments split into under \$10,000 segments before acceptance).
7. active cooperation with state and federal regulators and law enforcement officials, including voluntarily alerting law enforcement agencies to potentially suspect activity.
8. when Treasury finalizes the proposed regulations relating to \$3000 and larger cash sales of certain negotiable instruments, we will also be distributing customer handouts to educate our customers to the enhanced requirements and our customer screening policies.

In sum, while human error can never be completely eliminated, we believe that procedures, practices, and policies like those implemented by Deak International, not only assure adequate compliance with law but, to the extent possible, prevent abuse of our facilities by the unscrupulous.

The procedures which I have just summarized outline our United States compliance program. The Committee may be interested to know that in Canada, where we are the only transmitter to participate in the joint private sector-government Advisory Committee on Money Laundering chaired by the Minister of the Department of Finance, we have voluntarily adopted a similar program to prevent facilities abuse and to keep records of information which may be of value to law enforcement agencies.

OVERVIEW OF THE MONEY TRANSMISSION INDUSTRY

Deak International is but one member of the diverse domestic transmitters industry comprised of a multitude of various-sized companies serving the U.S. and foreign funds transmission needs of consumers and commercial enterprises.

Its members range from local "mom and pop" U.S. dollar money order companies serving limited geographical areas under the supervision of a single state banking department to the largest international banks. Since the role of banks in this area is fairly well known, I will concentrate on the non-bank transmitters which, while competing with banks, specialize in services which may be a sideline for many banks and serve market segments for which banks do not always choose to actively compete.

The primary divisions in the industry are between domestic and foreign transmitters, between those who serve consumer and/or commercial customer bases, and those who operate in the type of transmission instrument desired, and/or by the geographical or ethnic market served.

DOMESTIC TRANSMISSIONS

Non-bank domestic transmissions may be made by money order, travelers check, wire, or payment order. For today's purposes, "payment orders" are defined as wire-like transmissions executed outside of normal banking channels, e.g. between branches of the same organization.

Two of the most common types of such non-bank domestic payment instruments are the travelers check and the money order. Travelers checks are issued primarily by a small number of national/international issuers and sold domestically through a large number of independent sales agents, including banks, as well as through affiliated sales offices of the issuer. Due to their ready acceptability and fast replacement if lost or stolen, travelers checks are a particularly popular way for individuals to safely carry funds when away from home. Due to their small face values (rarely over \$500 or \$1000), and the requirement that each instrument be countersigned, travelers checks are not particularly convenient for the transmission of large sums of money.

Domestic money orders are also limited in face value. They are issued by a few large and a number of local concerns. Like travelers checks, money orders are sold not only directly by the issuers but also through a large network of independent sales agents. Money orders are often used by consumers and small businesses who do not maintain checking accounts to pay routine expenses such as rent and utilities.

Domestic check cashers are also sometimes included in the category of money transmitters. I understand a representative of this industry will be appearing today to discuss this business with you and, therefore, I will not address this segment of the industry.

FOREIGN TRANSMISSIONS

Foreign transmissions of funds may be made in U.S. dollars or, more typically, in foreign currency by travelers check, wire, draft or payment order. A draft is a check drawn on a checking account maintained by the issuer at a foreign bank and generally denominated in the currency of the country in which the bank is located. The typical foreign transmitter, be it a local "mom and pop" enterprise serving a particular ethnic group or a national bank serving major corporations, offers a combination of the following services: foreign currency exchange, foreign transmission by draft or wire, sale and encashment of U.S. and foreign currency travelers checks, and foreign funds collection. This latter service includes purchasing and/or sending for collection foreign-drawn checks and may also include purchasing foreign wires. Various institutions may concentrate on one or more of these lines of business but most will offer the full range of services at least to some degree. Some transmitters also offer payment orders. Non-bank foreign transmitters often issue their own foreign drafts, sell travelers checks issued by internationally-recognized issuers, and send wires through banks. The wires may be originated with a U.S. bank or by an order telephoned, telexed or faxed directly to a foreign bank with which the transmitter maintains a relationship.

The foreign draft and the foreign wire are prime means of transmitting large amounts of money abroad. (Travelers checks more commonly are carried abroad by business travelers and tourists for personal use or for smaller purchases). If time is not a major factor and the receiving country has a reliable mail system, a bank draft sent by mail is a cheap and reliable transmission vehicle. If time is a factor, because of the beneficiary's urgent need for funds, the wire is often used even though it is more expensive due to telex and bank charges. Wires, however, have the advantage of speed only when there are efficient banking systems in the receiving community of the receiving country. Payment orders are useful for prompt transmissions of small amounts needed quickly in a foreign country and for transmissions to outlying areas of less-developed countries where neither the mails nor local bank channels can be relied upon to quickly and dependably handle funds transmissions.

INDUSTRY ECONOMICS

Domestic transmitters of U.S. dollars pay for their overhead and make their profits from service charges and interest on the float on funds in the transmission process. Foreign transmitters also look to the spread in price between foreign currencies bought and sold. In most cases, the prices charged the public are subject to a high degree of competition between firms.

INDUSTRY MEMBERS

As to the number of industry members, on the bank side, every bank in the country is involved in at least a minor way with domestic transmission by wire or other means, many also sell travelers checks and money orders, and may engage in at least limited foreign currency exchange or transmission. On the non-bank side, there is a limited number of national and regional firms issuing travelers checks, money orders, foreign drafts and offering wire/payment order services. At the local level, there are thousands of travelers check and money order sales agents and a number of local money order issuers and foreign transmitters, often with a narrow ethnic market focus. The typical state which licenses the sale of money orders, travelers checks and bank drafts will have somewhere between 15 and 35 licensees, depending on the exact scope of the state law, with a third to a half of the licensees qualifying as regional or national institutions. It should be noted that the non-bank industry members are for the most part either small businesses or in the case of the national members, fairly small, independent business divisions of larger corporate entities. At the local level, the vast majority of transmitters (including the travelers check and money order sales agents) are "mom and pop" businesses.

CURRENT REGULATION OF NON-BANK TRANSMITTERS

STATE REGULATION

It should be recognized that there is a strong consumer protection justification for the regulation of transmitters since these entities accept money from the public with the promise of payment at a later time (for example, when the money order is presented to the issuer for payment). If the institution is not financially sound, and cannot make payment when the instrument is presented, the harm to consumers and small businesses left holding worthless paper can be extensive. For this reason, the vast majority of states regulate some or most forms of transmission.

The typical state law licenses the sale of checks or money orders and covers domestic and foreign money orders, travelers checks and bank drafts. Some also cover wires. Some states, like New York and California, specifically address all forms of international transmission including wires, payment orders and even the couriering of bank notes. While the specific requirements and intensity of regulatory oversight varies from state to state, these laws generally include several of the following:

1. pre-licensing investigation of the financial responsibility, litigation history and business experience of the institution and its owners, directors and key officers;

2. posting of a performance bond or collateral;
3. annual filing of a financial statement audited by certified public accountants (or, in some cases, verified by the licensee's officers);
4. quarterly or more frequent reporting of financial and sales information, litigation concerning licensed products, and changes in directors, officers, branch locations and sales agents;
5. prior approval for sale of the assets of the business;
6. periodic on-site examinations of operations and financial condition; and
7. maintenance of net worth at prescribed levels and maintenance of specified liquid assets ("permissible investments") in an amount equal to outstanding transmission obligations.

In the past few years, there has been a marked trend towards more stringent state licensing requirements and expanded examination programs. Thus, even though a few states do not license transmissions or have a low level of licensee supervision, enough states are actively regulating transmitters so that all national or most regional licensees are subject to extensive quarterly reporting and on-site examinations as required by the more active states. It should be noted that among the states with the most extensive and intensive regulation are major commercial centers such as California and New York.

A few states now also license currency exchanges and/or check cashers. It should be noted that there is a lower consumer protection need with these businesses that generally give value for value at the counter rather than holding customer funds. However, state licensing activity in these related areas is starting to increase.

FEDERAL REGULATION

In addition to state licensing, all money transmitters are subject to recordkeeping and reporting under the Bank Secrecy Act. Financial institutions required to file the CTR (Form 4789) by Title 31 of the Code of Federal Regulations include currency dealers and exchangers; check cashers; issuers, sellers and redeemers of travelers checks and money orders (except sales agents selling under \$150,000 in instruments a

month); licensed (and unlicensed) transmitters of funds; and telegraph companies. All persons, of course, are also required to file Form 4790 when transmitting over \$10,000 in cash or specified monetary instruments across U.S. borders. The sales agents exempt from filing the Form 4789, of course, are required by the Internal Revenue Code to file Form 8300.

Unlike banks, the non-bank transmitters enjoy none of the reporting exemptions permitted banks. For example, the non-bank transmitter may not maintain domestic exempt lists for regular customers and there is no exemption for international shipments sent by mail or common carrier. The only reporting exemption granted non-bank transmitters is that they are not required to file Form 4789 for their transactions solely with U.S. commercial banks. In these cases, the U.S. commercial banks must file the Form 4789 and may not include the non-bank transmitter on their exempt lists (except for licensed check cashers). This exemption was designed to reduce paperwork by not requiring both the non-bank and the bank to file duplicate mirror-image reports on their mutual dealings. It was felt that a single filing by the U.S. commercial bank was sufficient.

In addition, non-bank transmitters are subject to extensive recordkeeping requirements. First, all transmitters are required by 31 CFR Sec. 103.33 to keep records of extensions of credit in excess of \$10,000 and a record of each advice, request or instruction concerning non-cash international transfers in excess of \$10,000. Second, all transmitters will be subject to customer identification and centralized chronological logs for all \$3000 or greater cash sales of drafts, money orders and travelers checks when the proposed Treasury Department regulations are finalized, possibly this week. Thirdly, all non-banks presumably will be subject to whatever wire and payment order recordkeeping requirements are mandated by Congress and/or Treasury in the future.

Further, under 31 CFR Sec. 103.37, all currency dealers or exchangers must keep detailed records. For this purpose "currency dealers or exchangers" include by the express words of Title 31, check cashers, and because virtually all international transmitters exchange currency, most international transmitters. The required records include:

1. customer identification for all cash-for-cash currency exchanges over \$1,000;
2. customer identification on all extensions of credit lines, regardless of amount;
3. maintenance of all key bank records such as account statements, checks paid and credit and debit memos;
4. maintenance of all daily work records;

5. a system of books and records adequate to prepare an accurate balance sheet and income statement; and
6. additional records if the institution maintains customer accounts.

Non-bank financial institutions are, of course, also subject to the Title 18 criminal penalties for knowing involvement in money laundering, false filing or transaction structuring.

Taken together, the above currency reporting and recordkeeping requirements appear satisfactory, at least where foreign transmitters are concerned, to assure that those who comply with the law are maintaining an adequate record for law enforcement purposes, and avoiding knowing involvement in questionable activities.

In addition, as you are probably aware, the IRS does in fact conduct periodic examinations to review non-bank transmitters' compliance with the Bank Secrecy Act reporting and recordkeeping requirements. Further, a few states, such as New York, have added a detailed review of Bank of Secrecy Act compliance to their money transmitters examination process.

LEVEL OF INDUSTRY COMPLIANCE

While we cannot know what transpires in a competitor's shop, it appears that most of the national and regional non-bank transmitters are seriously addressing their state licensing and federal reporting and recordkeeping duties. Some of the small licensed institutions, particularly at the "mom and pop" level, generally have difficulty in complying with detailed regulatory requirements of any type and can probably benefit from educational assistance to fully understand applicable laws and to institute adequate procedures and controls to assure compliance.

PROPOSED ADDITIONAL LEGISLATIVE ACTIVITY

STATE ACTIVITY

At the state level, as mentioned above, the extent of regulation of non-bank transmitters is being increased in many cases. In addition to unilateral in-state activities, regulators from many states are participating in the newly-formed Money Transmitters Regulators Association ("MTRA") to share information and ideas leading towards better and more uniform state regulatory requirements and organized exchange of examination and other information to conserve state resources. The activities of the individual states and of the MTRA are supported by a broad spectrum of local, regional and national licensees, including Deak International.

These state-level activities necessarily focus on consumer protection issues such as stepped-up enforcement of the laws against the unlicensed and increased financial reporting, examinations, bonding and net worth requirements for those now licensed. In addition, several states, such as Georgia and New York, have also addressed anti-money laundering issues. However, numerous state regulators have expressed the view that any involvement by them in enforcing the Bank Secrecy Act and related law and regulations will require additional resources not now available.

Where the states have addressed money laundering, the provisions considered or adopted have included (1) criminalization of money laundering activity, (2) copying of federal reports to state regulators, and (3) customer information reporting requirements, sometimes more extensive than that required by federal regulations. We support state-level criminalization of money laundering, which permits state prosecution of abuses when enforcement resources are available, provided that the state law closely follows the federal criminal provisions. We willingly cooperate in state programs which require us to provide copies of our federal filings to state officials. However, states should not adopt customer identification, recordkeeping or reporting requirements which vary from the federal requirements. The federal rules are complex enough. Adding separate state requirements is confusing to our line employees and, should varying state requirements become widespread, will make centralized compliance supervision by our corporate headquarters virtually impossible.

We support uniform licensing of funds transmitters and increased enforcement against the totally unlicensed. However, to the extent that this duty is delegated to the states, the optimum means of accomplishing this goal is best addressed, in the first instance, by the state regulators who now have the MTRA to promote and coordinate these efforts.

Where increased licensing is concerned, because of the relatively small size of most transmitters, the overall regulatory burden to be placed on transmitters needs to be considered. Accordingly, more uniform state licensing would be welcome. To the extent that licensing is expanded from check sellers to other industry activities, single overall licenses are needed. Otherwise, the typical foreign transmitter could end up holding in a single state a check sellers license, a check casher's license, a foreign currency exchange license and an international wire/payment order license, each with separate bonding, reporting and recordkeeping. No industry member, large or small, has the resources to cope with this number of varying requirements. Further, where check cashing is concerned it should be remembered that the needs and requirements of foreign check cashers/collectors are totally

different from those of the domestic market and should be separately considered.

FEDERAL ACTIVITY

At the federal level, we assume that within the next year, in one form or another, customer identification and recordkeeping for wire and similar transactions may also be required. Although we do not in principle oppose recordkeeping, our concern with such additional recordkeeping requirements is cost and practicality -- we believe that any new rules must strike a reasonable balance between inconvenience and cost to our customers and the usefulness of the information collected. We believe that the details of any such requirements are best left to the rule making process so that all affected industry members will be afforded a full opportunity to comment on the proposed requirements.

We support efforts, such as Senator D'Amato's proposed bill, to enforce the current and future state transmitters licensing laws against those who refuse to follow them. However, federal legislation criminalizing violation of the state laws should draw a clear distinction between the intentional wrongdoer and those whose failure to comply is a matter of honest oversight or a good faith, but incomplete, attempt at compliance.

We urge Congress to adopt a broad immunity provision for all persons who voluntarily alert law enforcement agencies to suspicious activity. The current protections of the Right to Financial Privacy Act generally apply only to banks and are very technical in nature. Non-banks, and indeed private citizens, should be able to speak freely to law enforcement agencies, within the limits necessary to prevent abuse, without fear of civil or criminal liability from any source.

Lastly, on Section 8 of H.R. 3848, requiring depository institutions to request CTR's from non-bank customers, there is one situation which appears to need clarification. Most often, cash receipts deposited with a bank by an institution like ours represent excess cash beyond the levels needed for daily operations which has been accumulated through the regular course of business in handling many small non-reportable transactions. In this common case, we would have no CTR or similar report to exhibit to the bank concerning customer transactions since none was required. It is not clear to us how we or the bank would be expected to handle this situation.

In sum, Deak International supports regulation designed to protect our customers, to prevent facilities abuse, or to provide valuable information to law enforcement. The requirements, however, should be reasonably related to legitimate industry practices so that we can assure effective

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and efficient compliance at a reasonable cost. I am available to work with this Committee's staff, and indeed, with all regulators around the country, to assist in achieving these goals and welcome the opportunity to do our part.

Mr. Chairman, I thank the Committee for letting us share our views with you today. I will be pleased to answer any questions the Committee may have.

The Chairman. Very good. Thank you, Ms. Sweeney.
Mr. Wolf.

STATEMENT OF STEPHEN WOLF, TREASURER, PAY-O-MATIC CORP., SYOSSET, NY, TREASURER AND MEMBER OF EXECUTIVE COMMITTEE, NATIONAL ASSOCIATION OF CHECK CASHERS

Mr. WOLF. Thank you, Mr. Chairman.

My name is Stephen Wolf, and I am Treasurer of the Pay-O-Matic Corp. headquartered in Syosset, New York. We operate more than 100 check cashing locations in New York and New Jersey.

I am appearing this morning on behalf of the National Check Cashers Association where I serve as Treasurer, and serve on the executive committee of the board of directors. Our relatively new association represents more than 1,500 of the estimated 3- to 5,000 check cashers operating in the United States. As an industry, we employ more than 30,000 people and are responsible for the employment of significant numbers of additional people in industries that support our operations. Many check cashing companies are minority-owned and most employ a large percentage of minority people to manage and operate their business.

We appreciate your invitation to present the views of our members regarding proposed legislation to control money laundering. We agree with members of the committee that one way in which to battle drug traffic is to deny drug merchants the ability to make their illegal profits appear to be legitimate revenue.

The members of the National Check Cashers Association are more than willing to do our part in a national effort to fight money laundering. As outlined in our previous appearance before Senator Dixon's subcommittee, we are cooperating with Federal and State authorities in their efforts to fight money laundering. Our members file currency transaction reports, CTR's, with the Internal Revenue Service. Our Association has adopted policies to help prevent the check casher from being used by others as an unwitting conduit to launder money.

We have published guidelines for our members to follow in detecting structured transactions. We will continue to seek additional ways in which we can assist in the battle against laundering. Our members are in the business of check cashing for a fee. But beyond that common bond, there are numerous differences in all aspects of operations and services from location to location.

Some offer bill payment or FAX services, some the sale of State lottery tickets, even the issuance of bus passes and vehicle registrations. Some operate 5 days a week; others offer 24 hours a day, 365 days a year service. Some locations are in poorer residential neighborhoods. Others are in high rent business centers.

Most check cashers sell money orders, usually as agents for large money order companies such as American Express and Traveller's Express. Many check cashers also serve as agents of major wire transfer companies such as Western Union. Both of these services are made available to the general public for the conduct of ordinary household and personal affairs.

To put things in perspective, the average wire transfer that a check casher sells is \$180. The average money order issued is \$90. So although a majority of check cashers also serve as money transmitters, there are many businesses that serve as money transmitters which do not cash checks for a fee. These businesses may be pharmacies, convenience stores, groceries, travel agencies, et cetera. We understand that Western Union alone has more than 13,000 agents of which check cashers are only a fraction.

I should also point out that the act of cashing a check is not used to launder money. The launderer is trying to get rid of cash, not obtain it. Again, the check casher's business is giving out cash, not taking it in.

The committee asked us to testify on three legislative proposals for money laundering enforcement. We will comment on Senator D'Amato's proposal, and on H.R. 3848 as they will have a significant impact on our industry. S. 2327 would affect only depository institutions, so I leave that discussion to your witnesses from the banking industry.

Regarding Senator D'Amato's proposed legislation, we have reviewed a draft of the Money Laundering Enforcement Act of 1990. The legislation would make it a Federal crime to conduct an illegal money transmitting business in violation of State or local law. We fully support stern measures to prevent operation of illegal money transmitters who may be using their businesses for the purpose of laundering money.

Our members support efforts to close these businesses which we believe give legitimate money transmitters and check cashers an undeserved black eye. The existence of these illicit businesses has led to confusion among members of the public, the media, and elected officials.

Few people are aware, for example, that in a story on money laundering appearing in the New York Times last September, not one of the 130 illegal transmitters named was a check casher. It has been suggested that one method of controlling the illegal money transmitters might be through a requirement that money transmitters register with the Department of the Treasury.

Failure to register would subject the money transmitter to a severe penalty. We do not object to Federal registration. As I indicated earlier, we already submit CTR's. If it would assist in law enforcement efforts, we would not oppose a Federal registration program.

We would, however, be extremely concerned about any program that went beyond registration at the Federal level to the extent that it became regulation by another name.

An alternative method would be to encourage States to require money transmitters to register with state banking officials. Then, the bill's provision making failure to comply with the State law on money transmitting a felony would be more effective.

It is important, however, to make certain that the harsh penalties of the proposed legislation be applied to violators of State laws that clearly define an illegal money transmission business.

Regarding H.R. 3848, the National Check Cashers Association is extremely concerned about two provisions of the House bill.

We hope that in Congress's anxiety to enact legislation to thwart money laundering, these provisions which could severely affect our business will not be overlooked.

Section 9 of H.R. 3848 is a sense of Congress provision that encourages the State legislatures to adopt uniform laws to regulate businesses which provide check cashing services, transmit money, or issue or redeem money orders, traveller's checks, and similar instruments. This section of the bill would coerce States into adopting specified licensing requirements under the threat of Federal sanctions.

We vigorously oppose this section of H.R. 3848 for several reasons. The bill calls for a uniform statute to regulate our industry, yet as I described earlier there are major differences among check cashers. Some do not engage in wire transfers. In some cases, check cashing is only one part of a retail business that may sell products as far removed from check cashing as gasoline.

There are major differences in the clientele and business environment between stores located in Brooklyn versus Sioux City. No uniform statute could account for the variety of services provided by check cashers and the variety of businesses that cash checks. Each State ought to be free to establish policy as it sees fit to tailor the policy to the needs of the particular locale.

In New York and Illinois, for example, our stores serve as the local distributor of welfare benefits. In New York this is done by electronic means; in Illinois, by paper check. Local officials should be allowed the flexibility to account for such differences.

Section 90 tells a complex regulatory scheme that would take valuable time away from State officials who need to spend the time enforcing the existing law with regard to state financial institutions. The bill is also unclear regarding the status of new versus existing businesses.

As indicated earlier, we believe that a registration program could be effective. A registration program would provide the information necessary to control illegal money transmitters. A regulatory scheme would become extremely controversial in many States and would not add any significant additional barrier to money laundering.

Our most significant objection to H.R. 3848 is to a provision that was added by Floor amendment which would limit what a business could charge for cashing a check or money order. Our rates would be capped at an amount equal to 1.5 percent of the face amount of the check, not to exceed \$8. This has nothing to do with money laundering. The rates charge by a business are not related in any way to the problem of laundering. It is not appropriate to use this legislation to adopt selective price controls.

When pressed on this point on the House Floor, the sponsor of this amendment said, referring to check cashers:

Many of the people who are engaged in this activity are engaged also in the business of money laundering, and this is what will put them out of the business of check cashing and also, we hope, will put them out of the money laundering business.

First of all, we believe that money laundering is not a pervasive problem in our industry. In fact, Thomas Mahoney, the Director of the Special Investigations Division of the New York State Banking

Department, testified at hearings held by the Senate Banking Subcommittee on Consumer and Regulatory Affairs on November 1, 1980, and was asked by Senator Dixon of Illinois, and I am quoting from the transcript of the hearing at page 56:

Senator DIXON. I take it that you do go into these licensed money check cashing places and look at them?

Mr. MAHONEY. Yes, we do, sir.

Senator DIXON. Do I understand your testimony to be that they are not the problem?

Mr. MAHONEY. The check cashers are not the problem.

Furthermore, it appears that the true intent of this rate cap is to put us out of business. I do not believe that most of the House Members intended that result when they voted on the amendment. That result would certainly leave consumers with limited choices about where to obtain money orders, or cash checks, or receive their welfare benefits or food stamps.

We provide an important and convenient service to the public, as was confirmed by a recent survey conducted by the highly regarded Roper Organization. Eliminating the check casher whose prime source of revenue is check cashing fees would have no impact on money laundering. The illicit money transmitter would continue to operate untouched, and the public would be deprived of access to the neighborhood check casher and the valuable and convenient services that we provide.

We wholeheartedly agree with the goal of eliminating money laundering, but we cannot see how this can be accomplished by imposing a price ceiling on check cashing fees simply because we as check cashers also issue money orders. Would you also set a cap in the price of bread at a convenience store? Or the price of aspirin at the pharmacy because they sell money orders? Or the price of milk at a supermarket that is a Western Union outlet?

Artificially setting rate caps will increase the demand for our services at the same time that it reduces their supply. We urge the committee to reject this proposal.

I appreciate having this opportunity to testify, and will be pleased to respond to any questions you may have.

[The prepared statement of Stephen Wolf follows:]

STATEMENT OF
STEPHEN WOLF
REPRESENTING THE NATIONAL CHECK CASHERS ASSOCIATION
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
MAY 18, 1990

Good Morning. My name is Stephen Wolf, and I am Treasurer of the Pay-O-Matic Corporation, headquartered in Syosset, New York. We operate more than 100 check cashing locations in New York and New Jersey.

I am appearing this morning on behalf of the National Check Cashers Association where I serve as Treasurer and serve on the Executive Committee and Board of Directors. Our relatively new association represents more than 1500 of the estimated 3,000-5,000 check cashers operating in the United States. We employ more than 30,000 people and are responsible for the employment of significant numbers of additional people in industries that support our operations.

We appreciate your invitation to present the views of our members regarding proposed legislation to control money laundering in the United States. We agree with the Members of this Committee that one way in which to battle drug traffic in the United States is to deny drug merchants the ability to make their illegal profits appear to be legitimate revenue.

Members of the National Check Cashers Association are more than willing to do our part in a national effort to fight money-laundering. As outlined in our previous appearance before Senator Dixon's Subcommittee, we are cooperating with Federal and State authorities in their efforts to fight money-laundering. Our members file currency transaction reports (CTR's) with the Internal Revenue Service. Our association has also adopted a policy to help prevent a check casher from being used by others as an unwitting conduit to launder money, and we have published guidelines for our members to follow in detecting structured transactions. We will continue to seek additional ways in which we can assist in the battle against laundering.

Check Cashers and Money Transmitters

Our members are in the business of cashing checks for a fee. But beyond that common bond, there are numerous other services typically provided by check cashers that vary greatly from location to location. Among the services provided by check cashers are those functions that can be included under the definition of money transmission.

Virtually all check cashers I know also sell money orders to the public. In most cases these outlets serve as agents for large money order companies such as Travelers Express or American Express. A majority of check cashers also serve as agents of major wire transfer companies, such as Western Union or American Express. These services are made available to the general public for the conduct of ordinary household and personal affairs. To put things in perspective, the average wire transfer that a check casher sells is \$180.00 and the average money order they issue is \$90.00.

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Although a majority of check cashers also serve as money transmitters, there is a whole universe of businesses that serve as money transmitters, either by selling money orders or wiring funds, but do not cash checks for a fee. These businesses may be pharmacies, convenience stores, groceries, travel agents, or a host of other businesses. We understand that Western Union alone has more than 13,000 agents, of which check cashers are only a fraction.

The Committee asked us to testify today on 3 legislative proposals for money-laundering enforcement. We will comment on Senator D'Amato's proposal as well as HR 3848, as they will have a significant impact on our industry. S 2327 would affect only depository institutions, so I will leave discussion of that bill to your witnesses from the banking industry.

Senator D'Amato's Draft Legislation

We have reviewed a draft of "The Money Laundering Enforcement Act of 1990", sponsored by Senator D'Amato. The legislation would make it a Federal crime to conduct an illegal money transmitting business in violation of state or local law. We fully support stern measures to prevent the operation of illegal money transmitters who may be using their businesses for the purpose of laundering money. Our members support efforts to close these businesses which we believe give legitimate money transmitters and check cashers an undeserved black eye.

The existence of these illicit businesses has led to confusion among members of the public, the media, and elected officials. Few people are aware, for example, that not one of the 130 illegal New York transmitters named in a story on money laundering appearing in the New York Times last September was a Check Cashier.

It is important, however, to make certain that the harsh penalties of the proposed legislation--\$20,000 fine and up to 5 years in jail--be applied to violators of state laws that clearly define an illegal money transmission business.

Federal Registration

It has been suggested that one method of controlling the illegal money transmitters might be through a requirement that money transmitters register with the Department of the Treasury. Failure to register would subject the money transmitter to a severe penalty.

We do not object to Federal registration. As I indicated earlier, we already submit currency transaction reports to the IRS. If it would assist in law enforcement efforts, we would not oppose a Federal registration program. We would, of course, be extremely concerned about any program that went beyond registration at the Federal level to the extent that it became regulation by another name.

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It seems to me, however, that the real deterrent to illegal money transmitting, and the attendant money laundering, is enforcement. Unless accompanied by appropriate audits, a Federal registration program might serve only to provide illegal operators with a Federal imprimatur. The customer might assume this registration meant that the Federal government had somehow approved the money transmitter.

State Registration

One alternative method of preventing illegal money transmitters from operating would be to encourage states to require money transmitters and their agents to register with state banking officials. Then the bill's provision making failure to comply with a state law on money transmitting a felony would be far more effective.

International Wire Transfer Record-keeping

Senator D'Amato's proposed legislation would require depository institutions and a host of other businesses, including check cashers and money transmitters, to keep records of international transactions. We believe that such a requirement could be helpful if limited to those types of transactions which are known to be used by money launderers.

We believe, as required by the bill, that the Secretary of the Treasury should balance the usefulness of the information to be recorded against the cost of compliance for these small businesses. The check cashing business can be a very busy retail business at times, as people tend to cash checks during lunch hours and after work, and especially on payday. If check cashers were required to keep extensive records on individuals sending international wire transfers, there could be a severe limitation on our ability to serve customers efficiently during our peak times. We suggest that perhaps a specific amount be set above which records would be required. To protect against an individual sending wires just below the specified amount the regulations could be patterned after the CTR regulations which attempt to control structured transactions.

We are not certain who would be covered by this section of the bill. Are those who "redeem" money orders and travelers checks meant to include any business which cashes them? The point needs to be clarified, or the regulated universe might include department stores, hotels and anyone else who might accept a travelers check, under this section of the bill.

I should also point out that specifying "check cashers" in this section of the bill is not necessary. The act of cashing a check is not used to launder money, because the launderer is trying to get rid of cash, not obtain it. Again, the check casher's business is giving out cash, not taking it in.

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HR 3848

The National Check Cashers Association is extremely concerned about two provisions of the House bill. We hope that in Congress' anxiety to enact legislation to thwart money laundering, these House provisions which could severely affect our business will not be overlooked.

State Regulation

Section 9 of HR 3848 is a "Sense of the Congress" provision that encourages the state legislatures to adopt uniform laws to regulate businesses which "provide check cashing services, transmit money, or issue or redeem money orders, travelers checks, and similar instruments".

This section of the bill would coerce states into adopting specified licensing requirements under the threat of Federal sanctions to be suggested by the Department of the Treasury. We vigorously oppose this section of HR 3848 for several reasons.

Uniformity

The bill calls for a uniform statute to regulate our industry. Yet as I described earlier, there are major differences among check cashers. Some do not engage in wire transfers. In some cases check cashing is only one part of a retail business that may sell products as far removed from check cashing as gasoline. There are major differences in the clientele and business environment between stores located in Brooklyn and Sioux City.

No uniform statute could account for the variety of services provided by check cashers and the variety of businesses that cash checks. Each state ought to be free to regulate check cashers as it sees fit, to

tailor the regulations to the needs of the particular locale. In New York and Illinois, for example, our stores serve as the local distributor of welfare benefits. In New York this is done by electronic means, and in Illinois by paper check. Local regulators should be allowed the flexibility to account for such differences.

Section 9 details a complex regulatory scheme. Administration of a complex program will take valuable time away from state officials who need to spend the time enforcing the existing law with regard to state financial institutions, including banks. The bill is also unclear regarding the status of new versus existing businesses.

As indicated earlier, we believe that a registration program could be effective. A registration program would still provide the information necessary to control illegal money transmitters. A regulatory scheme would become extremely controversial in many states, and would not add any significant additional barrier to money laundering.

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The House Rate Cap

Our most significant objection to HR 3848 is to a provision that was added by floor amendment which would add another requirement to the licensing provisions of the bill limiting what a business could charge for cashing a check or money order. Our rates would be capped at an amount equal to 1.5 percent of the face amount of the check, not to exceed \$8.00.

There are several objections to this rate cap. It has nothing to do with money laundering. The rates charged by a business are not related in any way with the problem of laundering. It is not appropriate to use this legislation to adopt selective price controls. When pressed on this point on the House floor, the sponsor of this amendment said, referring to check cashers:

"Many of the people who are engaged in this activity, are engaged also in the business of money laundering, and this is what will put them out of the business of check cashing, and also we hope will put them out of the money laundering business".

First of all, we believe that money laundering is not a pervasive problem in our industry, although as in banking and other businesses there are always the exceptions.

In fact, Thomas Mahoney, the Director of the Special Investigations Division of the New York State Banking Department, testified at hearings held by the Senate Banking Subcommittee on Consumer and Regulatory Affairs on November 1, 1989, and was asked by Senator Dixon of Illinois: (I am quoting from the Transcript of the Hearing, at Page 56)

"Senator Dixon. I take it that you do go into these licensed money check-cashing places and you look at them?

Mr. Mahoney. Yes, we do, sir.

Senator Dixon. Do I understand your testimony to be that they are not the problem?

Mr. Mahoney. The check-cashers are not the problem."

Furthermore, it appears that the true intent of this rate cap is to put us out of business. I don't believe that most of the House Members intended that result when they voted on the amendment. That result would certainly leave consumers with limited choices about where to obtain money orders or cash checks or receive their welfare benefits or food stamps. We provide an important and convenient service to the public as was confirmed by a recent survey conducted by the highly regarded Roper organization.

Eliminating the check casher, whose prime source of revenue is check cashing fees, would have no impact on money laundering. The illicit money transmitter would continue to operate untouched and the public would be deprived of access to the neighborhood check casher and the valuable and convenient services that we provide.

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We wholeheartedly agree with the goal of eliminating money laundering, but we cannot see how this can be accomplished by imposing a price ceiling on check cashing fees, simply because we as check cashers also issue money orders. Would you also set a cap on the price of bread at a convenience store or the price of aspirins at a pharmacy because they sell money orders? Or the price of milk at a supermarket that is a Western Union outlet?

Artificially setting rate caps will increase the demand for our services at the same time that it reduces their supply. We urge the Committee to reject this proposal.

I appreciate having this opportunity to testify and will be pleased to respond to any questions you may have.

The CHAIRMAN. Thank you, Mr. Wolf.

Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

Mr. Wolf, let me give you a scenario. You have indicated that you do not believe that the check cashers, that there is any problem as it relates to money laundering in this area.

Would you say that all of the check cashing operations that are taking place now are licensed pursuant to State law?

Mr. WOLF. Check cashing? Are you referring to New York State, sir?

Senator D'AMATO. New York City, the check cashing operations that are taking place. Aren't there many that are not—

Mr. WOLF. There are unlicensed—

Senator D'AMATO [continuing]. That do not meet the license requirements?

Mr. WOLF. There are operations, we believe, which cash checks for a fee which have not submitted for license with the State department, the department of bank.

Senator D'AMATO. Do you believe that that is a significant number, or there are a significant number of them that are not licensed?

Mr. WOLF. We believe that the locations that are in this business are primarily in a money transmission business, as opposed to a check cashing business.

Senator D'AMATO. I did not ask you that. I did not ask you that. Are there many unlicensed check cashing operations taking place?

Mr. WOLF. I wouldn't have any information on that. I do not know.

Senator D'AMATO. Where do you operate your—where is your operation from? Your own, personal?

Mr. WOLF. I do not operate a check cashing store. My company operates over 100 locations, mostly in New York City, a few in New Jersey.

Senator D'AMATO. And you have no idea whether or not there are a large number, for example, of unlicensed check cashing operations in that region, in the New York Metropolitan Region?

Mr. WOLF. No, we do not know that. We do know that there are locations that appear to be check cashers. They are set up like check cashers. A few times that we have investigated, tried to make a phone call to find out about their fees, we've been turned away.

Senator D'AMATO. What would that suggest to you?

Mr. WOLF. Well, it suggests that they are into a business which is illicit, but we don't know that it is check cashing. We believe that it is more than a transmission range.

Senator D'AMATO. Well, do you not want to see to it that the same laws that your people adhere to are administered in a way so that there is a level playing field, and so that the illegitimate check cashing operation is regulated or put out of business, or if there is an illegal activity such as money laundering? By the way, in your statement you make a proposition. You put forth that, since we give out cash—meaning the check operation—therefore, how could that be involved in money laundering? Is that not what you have basically indicated?

Mr. WOLF. Essentially, yes.

Senator D'AMATO. Well, what about the check casher who gets his cash from, where, the illegal source being drugs. He sets up that operation so that people do come in. And, by the way, he will cash those checks at a much cheaper rate than you can do it, because you are a legitimate operation, the people in your business who are licensed. So he will take 1 percent. He does not care if he takes no percent. He can even take far bigger risks in terms of the checks that he is cashing, risks that some of them may bounce, et cetera, because he is laundering illegal dollars. You could not stay in business, nor could the people who you represent, if you operated that way.

And he then takes those checks and puts them into the system, cleaning his money. Does that make sense to you?

Mr. WOLF. Yes, the scenario certainly makes sense.

Senator D'AMATO. Would you acknowledge that that takes place?

Mr. WOLF. I have to suspect that it does. It has never been proven that one does, but obviously——

Senator D'AMATO. Well, then, does that not fly in the face of your testimony as it relates to putting forth that check cashing operations, by their nature, would not present a significant opportunity for money laundering? That is not really accurate.

Mr. WOLF. There is an opportunity, of course, to take in currency.

Senator D'AMATO. So is it not important, and do you not want to see that the legitimate operator, and there are many—it is not the sense of the Congress, or certainly this committee, to put them out of business—will he not be enhanced and protected by seeing that the rules and regulations and the licensing requirements are uniform and that they are adhered to?

Will that not protect you by driving out the illegal operators and operations, not only making it more difficult for money launderers, but will that not give to your people a better opportunity to compete in the marketplace? You have to be being undercut by every kind of an illegal operation that does not conform to the law. Is there not a potential for them undercutting you?

Mr. WOLF. Yes. Probably so. We certainly believe that strict enforcement of existing State policies and regulations could rid us of some of this illegal activity.

Senator D'AMATO. You do not really believe that the State is doing a credible—or that State, local, et cetera, in the New York Metropolitan Region——

Mr. WOLF. No.

Senator D'AMATO [continuing]. Is adequately supervising the licensing requirements, do you?

Mr. WOLF. I believe that the State is doing a very good job supervising those people who are legitimate and who are being supervised.

Senator D'AMATO. So what you are saying is, those people who are licensed may be doing a good job, but what about the hundreds and hundreds and hundreds who are not licensed and who do not follow the law?

Mr. WOLF. I agree. They have escaped.

Senator D'AMATO. Significantly. You have got more unlicensed operations going on than you do have licensed. What would you say to that? Is that probably the case?

Mr. WOLF. I really would not venture a guess. It is probably the case to some extent.

Senator D'AMATO. All right. So a legitimate operator in terms of the initiatives that we have put forth, do you see them being imperiled?

Mr. WOLF. I believe that my remarks focused on the need for local supervision and policymaking. We are particularly concerned with areas of potential regulation that may not address the differences in a business which has essentially grown up in various locations to service local needs, and they may not be operating the same way and may suffer at the hands of uniform regulation.

Senator D'AMATO. I thank you for your candor.

I would like to, Mr. Chairman, turn to Ms. Sweeney. Let me say I think you have done an outstanding job in your presentation and in terms of the model of operation that you have brought to your facility. It must be very frustrating for those legitimate, bona fide both check cashers—and that is what I was attempting to get at, Mr. Wolf—those of your people in this area of activity who are bona fide who run a lawful operation have got to also feel the problems attendant with these illegal services that are taking place. They have got to affect you adversely.

In the case of Deak International, it would seem to me that this has got to be very frustrating. Here you are moving in an area to do everything that you possibly can. You are going beyond the requirements of the law by setting regulations. For example, you mentioned that you do not take more than \$2,500 in street money from people.

I think there is a tremendous potential for the legitimate members of the industry—because you are there, you see on a day-in/day-out basis—to shut down, and I think you would want to shut down, these illegal operations, not only because they impinge upon your business, but also as a way of really giving a shock to the money launderers who are using these wire transmitters. We ought to burn them good. When they go to grab the system, give them a real jolt.

Do you have any thoughts or any suggestions in terms of let us say whistle-blowing activities? How could you—you touched on this in your testimony—how could we enhance your ability to cooperate with us without it becoming a legal impediment so that if you wanted to cooperate with us you could make it more effective? And then what other suggestions would you care to make in terms of how we could make our legislative proposals more practical and more effective?

Ms. SWEENEY. First, in direct response to your question, Senator, we need two things to allow the legitimate to whistle blow.

First we need to be sure that we are not going to turn around and get sued.

Second of all we need somebody to talk to. Regulated people, like myself from a large company, have good rapport with law enforcement agencies around the country. Many of the smaller licensees do not, but the frustrations that you have expressed could not have

been expressed better. They are often the ones who really do suffer from this illegal competition.

They do not often have a place to go. I understand FinCEN has set up an 800 number where any member of the public can call up and say, hey, there is something going on out there you ought to know about. I am hoping that will lead to a broad dissemination of information by FinCEN concerning unlicensed transmitters to not only the Federal agencies but to State agencies.

But the industry does not always know about this service because it is new, and we need a mechanism for educating the industry so that they know that there is a FinCEN 800 number, they know they have a State regulator they can call.

On the State side, the States need resources. It is very true that the licensed are regulated and the job we all share in going after the unlicensed—who, by the way, are not members of our industry; not at all; they are crooks—the States do need Federal assistance.

The CHAIRMAN. If you would just yield—if we get an enforcement and interdiction system started, why not take the money collected by nailing people who are laundering drug money and use that money to pay for the system in the future?

Ms. SWEENEY. There—

The CHAIRMAN. In other words, it seems to me that we ought to be not only grabbing the laundered money, but using that money to build a system to catch the rest of the crooks.

Ms. SWEENEY. Mr. Chairman, there are 50 State regulators out there who would endorse that.

The CHAIRMAN. Excuse me, Senator D'Amato.

Senator D'AMATO. That is quite all right, Mr. Chairman.

You testified that Deak International has gone beyond the letter of the law by adopting "know-your-customer" measures and, you said, for example, "Deak does not accept street money in amounts over \$2,500, and screens incoming payments to prevent smurfing."

That statement takes into account two things. When you are actively looking for people, the same guys reappear. So I would take it by that that if you do not know that person who comes in with more than \$2,500, you do not accept it?

Ms. SWEENEY. It is a little bit more than that, Senator.

Senator D'AMATO. All right.

Ms. SWEENEY. We are talking about U.S. street money. As far as we are concerned, that usually is something somebody should put in a bank. We do accept U.S. cash in larger denominations because it normally for our customer base to come directly from their bank.

Since we have a nonaccount customer base, many of our customers are nonrepeats. A lot of our customers are foreign people who are here for a week or a month. We may never see them again. An awful lot of people at our counters we will see once in their lifetimes, maybe once a year. But what we are doing is setting up as many systems as possible so that we can identify repeat people, especially those dealing in cash. And when we do identify someone who is a repeat cash customer, we go up to them and we say: Excuse me, what do you do for a living? And if we do not think that there is a real good reason why this lady changed \$5,000 worth of francs with us last week and this week, because we really do not think she has been to France in between—

Senator D'AMATO. Then that is part of your operation. It is the training of personnel.

Ms. SWEENEY. Yes.

Senator D'AMATO. You aggressively are looking to see that these are legal transactions and, if you have reason to believe otherwise, you will not do business with them?

Ms. SWEENEY. That is correct, sir. And if the case is serious and deserves law enforcement attention, we will call CID immediately.

Senator D'AMATO. Mr. Chairman, I would like to commend all our witnesses.

Mr. Melnikoff, I would really think that we would like to take up your offer and have staff come to the wire operations to see firsthand the kind of complexities of those things you are dealing with. We are not looking to pass legislation that will become so intrusive, and that will become so costly and so difficult, that it will impede the effort of attempting to weed out and to distinguish those illegal operators from the vast bulk of legal transactions.

We are not looking to burden the system unnecessarily, but what we are looking to do is to put the kind of responsible legislative package together that is going to give the tools to law enforcement they need. We do not want more recordkeeping for the sake of recordkeeping. I know that is a great problem. I understand that, really. I do not think that is our goal. So I would like to take you up on that.

And, Ms. Sweeney, I would like to draft you into a cooperative effort, and the same with you, Mr. Wolf, as it relates to using the invaluable expertise that you do have, and the people you work with, who are out there and who understand the practicality of how you go about attempting to build the barriers and to trap the crooks, and to service the good guys. We are not going to know it up here. You are the people who have got that ability.

So I know you have worked with staff, and I would like to continue that and ask for your cooperation. If you have any additional thoughts as to how we can make this legislative effort a better one, I would be very appreciative and I know the Chairman would be, as well.

Ms. SWEENEY. Just let us know when and where.

Senator D'AMATO. Well, I have got them right here. We are going to set up that meeting right now.

Mr. Chairman, I want to commend you. It is not often that the Chairman of a major committee will take his time and spend his valuable time and resources—here it is Friday, and we are well into lunchtime, and you are undertaking these hearings. You have extended to me and to my staff the opportunity to submit our legislation, as well, almost in the eleventh hour, at indeed the eleventh hour, and it certainly demonstrates a commitment that you have, and your people have, to dealing with this problem in an extraordinary commitment of your own time and your own energies.

So let me commend you for that, Mr. Chairman.

The CHAIRMAN. Well thank you, Senator D'Amato. I think we have had a very sound hearing record developed today. These witnesses have contributed importantly to it. We are now going to take your proposals and the other proposals and work these through into a package that we think is balanced and we think will

get the job done and achieve the pluses, and hopefully not the minuses, and we are going to get it enacted this year. That is my goal, and I think we can.

So I every much appreciate your leadership and the questioning that you have just done and the record that we have established here.

We will have some additional questions for the record for you. We will submit those to you promptly, and we appreciate your testimony today.

The committee stands in recess.

[Whereupon, at 12:45 p.m., the committee was adjourned, subject to the call of the Chair.]

[Response to written questions and additional material supplied for the record follow:]



National Check Cashers Association, Inc.

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**QUESTIONS FOR STEPHEN WOLF
FROM SENATOR ALFONSE D'AMATO
HEARINGS ON MONEY LAUNDERING LEGISLATION
MAY 18, 1990**

Q.1. In your prepared statement you seem to be generally supportive of the provision in my bill making it a Federal crime to conduct an illegal money transmitting business in violation of state or local law. Then you add:

"It is important, however, to make certain that the penalties of the proposed legislation be applied to violators of state laws that clearly define an illegal money transmission business."

Question: Are there any state laws you know of that do not clearly define an illegal money transmission business? Do you have any comments, for example, on the New York State definition?

A.1. The National Check Cashers Association supports Section three of S 2651 which makes it a Federal crime to conduct an illegal money transmitting business. Section three defines an illegal money transmitting business as a business which is "a violation of the law of a State or political subdivision in which it is conducted."

I am not conversant with the statutes in all 50 states regarding money transmitters. However, New York State Banking Law has the following provision in Article XIII B, Section 641 making it illegal to engage in money transmitting without a license:

"No person shall engage in money transmission activities without first obtaining a license from the Superintendent of Banks. However, certain entities, including banks, savings banks, savings and loans associations, and investment companies, are excluded from this specific licensing requirement". The term money transmission includes all instruments sold or issued including travelers checks, money transfers and shipments by courier for the transmission or payment of money.

We believe this definition is clear, and a business which transmitted money without obtaining such a license should be subject to the Federal penalties proposed in S 2651 for illegal money transmitters.

The newly-formed Money Transmitter Regulators Association, a multi-state effort, has established as one of its goals the drafting of model legislation for consideration by the states. We hope that this effort will lead to a set of laws written with sufficient clarity so as to ease the compliance burden for the members of the National Check Cashers Association.

I do want to emphasize that the National Check Cashers Association supports strong penalties for those illegal money transmitter who operate in competition with legitimate businesses which comply with both the letter and the spirit of both State and Federal law. We support the Committee's efforts to crack down on those operators who may be using their stores for the purpose of laundering money or engaging in other illegal activities.

Q.2. You also question who would be covered by Section 6 of the bill requiring Treasury to issue record keeping regulations for those who "redeem" money orders and travelers checks.

I want to add for the record that those we intend to cover are those who qualify as financial institutions under the Bank Secrecy Act and its regulations, to avoid covering some of those you mention, such as hotels and department stores.

A.2. Thank you for the clarification.

STATEMENT OF ROBERT B. SERINO
DEPUTY CHIEF COUNSEL (POLICY)
OFFICE OF THE COMPTROLLER OF THE CURRENCY
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE
May 18, 1990

Mr. Chairman and members of the Committee:

Thank you for the opportunity to comment on proposed legislation related to money laundering. Before addressing the legislation, I will discuss the Office of the Comptroller of the Currency's ongoing Bank Secrecy Act (BSA) activities and our efforts to combat the serious concern that banks not be utilized to aid in money laundering.

The OCC has been and continues to be committed to fighting the war on drugs and, in particular, the money laundering problem. The OCC shares the Committee's belief in the importance of financial institutions' compliance with the Bank Secrecy Act and in preventing such institutions from being used wittingly or unwittingly in laundering money. We have not and will not countenance financial institutions being used to aid in money laundering.

We firmly believe that no one should be allowed to launder the proceeds of their illegal activities through financial institutions in this country or abroad. We are extremely sensitive to the adverse impact money laundering has on both the integrity and safety and soundness of the nation's financial institutions. Toward this end, the OCC has identified money laundering as a potential systemic risk for the banking industry and has so notified our examiners. We remain committed to working with the law enforcement community to ensure compliance with all laws, including the BSA and money laundering statutes, and to assist in the investigation and prosecution of organizations or individuals who violate the law.

Industry Communication

The OCC believes that the primary responsibility for ensuring that banks not be used to launder money rests with a bank's management and its board of directors. To assist them in meeting this responsibility, the OCC devotes significant resources to educating the banking industry about its responsibilities under

the laws. These efforts include: providing speakers to address industry groups and participate in seminars and training sessions; making specialists and attorneys available to respond to inquiries relating to BSA and money laundering matters; providing guidance and communicating changes to the law and regulations. Our specialists and attorneys across the country and in Washington respond to inquiries on a regular basis concerning BSA and money laundering matters.

In an effort to improve the industry's understanding of money laundering issues, the OCC recently published Money Laundering: A Banker's Guide to Avoiding Problems. This booklet presents basic background information on money laundering laws, describes a variety of money laundering schemes that have involved banks, and presents some warning signs that may help bankers avoid getting involved with launderers. The booklet recommends specific steps banks can take to help the government in its anti-laundering efforts. Copies of the booklet were forwarded to all national banks in December 1989, and, to date, more than 70,000 copies have been distributed domestically and internationally.

The OCC also has issued a banking circular to all national banks discussing the Statement of Principles on Money Laundering issued by the Basle Committee on Banking Regulations and Supervisory Practices. The Committee, established by the Group of Ten countries in 1974, issued the statement to advise financial institutions of the need for appropriate procedures to combat money laundering. In forwarding the Statement to all national banks, the OCC encouraged bank management to establish policies and procedures to ensure: (1) the proper identification of all persons conducting business with the institution; (2) the conduct of the bank's business in conformity with high ethical standards; (3) cooperation with law enforcement authorities within the confines of applicable law; and (4) proper staff training in all matters concerning the Statement of Principles.

OCC Training

The OCC provides formal training to its examining staff on an on-going basis. Entry-level examiners receive both classroom and on-the-job training in BSA compliance as part of their training team experience. More experienced examiners attend the Federal Financial Institutions Examination Council's White Collar Crime School, the Joint Bank Regulatory/FBI White Collar Crime School, the OCC's Assistant National Bank Examiner School, and other training programs to sharpen their knowledge of law enforcement issues. The OCC also routinely provides written guidance to all examining personnel detailing any changes to the BSA or money laundering statutes, implementing regulations or new interpretations of the law.

Inter-Agency Cooperation

The OCC continues to be an active proponent and participant in interagency coordination in the BSA and money laundering areas. The OCC has been a long-standing active participant in the Bank Secrecy Act Working Group at the Treasury Department. The BSA Working Group has improved communication and enhanced coordination on a variety of BSA-related issues. Similarly, the OCC has been a long-standing and active participant in the Justice Department Bank Regulator Bank Fraud Working Group which works to better coordinate the efforts of the law enforcement community and the financial institution regulators. The accomplishments of this group have been well-recognized. It stands as a model of how effectively the government can address a problem by agencies working together.

International Efforts

Recognizing that international cooperation by bankers, regulators and law enforcement authorities is critical to the success of efforts to combat money laundering, the OCC also has been an active proponent and supporter of international initiatives to address the problem.

The OCC's International Banking and Finance Division (IB&F) assists the Treasury Department as a facilitator in working with developing countries on money laundering issues. Treasury has used IB&F personnel to train bank regulators in developing countries in money laundering examination techniques. OCC representatives have shared their expertise with officials from a number of foreign countries including Australia, Colombia, Canada, Japan, Thailand, and Ecuador.

The OCC recently met with representatives of the new government of Panama to evaluate its regulatory scheme. The OCC currently is assessing whether and how it can assist by providing additional resources, in the form of instructors and training, to assist the government in methods to curtail money laundering.

The OCC representatives on the Basle Committee on Banking Regulation and Supervisory Practices participated in the Committee's development of a statement of principles and code of conduct for all financial institutions to follow which was adopted by the Committee in December of 1988. Other countries have subsequently endorsed these principles, which are intended to prevent the use of the banking system for money laundering purposes. As noted previously, the OCC issued a notice to all national banks encouraging them to establish policies and procedures to carry out the principles embodied in the international statement, and OCC examiners have been directed to ensure that banks are focusing on the concerns identified in the code.

The OCC also has worked for years as a participating agency of the International Criminal Police Organization (INTERPOL). In particular, we have contributed to the working Group to Improve Cooperation between the Law Enforcement and Banking Communities.

The OCC also has been an active member of the Financial Action Task Force which was created in July 1989 during the G-7 Summit. The heads of state and government of the G-7 countries gave the Task Force a mandate to study measures that have been taken to prevent utilization of financial institutions by money launderers and to make recommendations on how to improve international cooperation against money laundering.

In its final report, issued in April of this year, the Task Force recommended 40 actions designed to address money laundering and facilitate greater cooperation in international investigations, prosecutions, and property seizures. Specifically, the Task Force recommended that, as in the United States, financial institutions must be able to report suspicious transactions to law enforcement, in good faith, free from fear of liability under secrecy laws. Financial institutions must also have procedures in place to identify and know their customers. In addition, the Task Force recognized that, both for domestic and international enforcement, it is essential that financial institutions maintain adequate records about customers and transactions, including currency transactions, for use in future criminal investigations and prosecutions.

OCC's Supervisory Efforts

The primary responsibility for compliance with the law appropriately rests with each financial institution since it is the first and most important line of defense against money laundering. At the same time, the OCC has continuing responsibility to monitor the national banking system and to ensure that national banks use safe and sound banking practices and comply with the law. Accordingly, in our supervisory efforts, we focus on both management's and the board of director's ability and commitment to ensure behavior that is both prudent and in compliance with the law. It has been our experience that no amount of examination or supervision works as well as a bank's own system of internal controls.

To accomplish the OCC's mission of ensuring the safety and soundness of the banking system and promoting bank compliance, we have adopted a supervisory philosophy that calls for ongoing supervision of all banks within the system. To supplement our ongoing supervision, the OCC also has instituted a comprehensive compliance program designed to better focus examination resources and, through the deterrent value of random selection, to heighten the industry's own compliance efforts. The program provides for biennial BSA reviews of all banks holding more than \$1 billion in

assets and annual review of a statistically valid randomly selected sample of other banks.

The flexibility of OCC's supervisory strategy also permits us to target any bank for intensive or repetitive BSA examination or follow-up activity in instances where we have information from any source that suggests a BSA compliance problem. Analyses provided by the U.S. Customs Service, for example, help to pinpoint institutions that exhibit unusual patterns of currency shipments relative to their Currency Transaction Reports (CTR's). Using such leads, we can target compliance efforts to areas where problems are most likely to be uncovered.

PROPOSED LEGISLATION

You have asked us to comment on three bills -- S. 2327 introduced by Sen. John F. Kerry; S. 2651 introduced by Sen. Alfonse M. D'Amato; and H.R. 3848 -- which have been referred to the Senate Banking Committee. We will discuss the Senate bills first, including discussions of parallel provisions of H.R. 3848. We will then discuss the remaining provisions of H.R. 3848.

S. 2327 -- Depository Institution Money Laundering Amendments of 1990:

Charter Revocation

S. 2327 would require the OCC to conduct a hearing to determine whether to revoke the charter of a national bank convicted of money laundering offenses under sections 1956(a) and 1957 of Title 18, United States Code, the Money Laundering Control Act, and would permit the OCC to conduct such a hearing when a national bank is convicted of violating the BSA (subchapter II of chapter 53 of title 31, United States Code). H.R. 3848 would require the OCC to conduct a hearing on charter revocation when a national bank and directors or senior executive officers of the bank are convicted of money laundering or BSA offenses.

We fully endorse the need for a strong federal response to money laundering in all its forms, and we generally support the charter revocation provisions in both the Senate and the House bills. Several provisions from the bills deserve specific comment.

Both H.R. 3848 and S. 2327 set forth various factors which the OCC must consider in deciding whether to terminate the national bank's charter after a pretermination hearing. We strongly favor setting forth explicit statutory factors to be considered in charter revocation proceedings. One factor which we believe is important to consider is the factor concerning the existence of policies and procedures in the bank to prevent the occurrence of money laundering offenses. The existence of this factor would encourage banks to establish such policies which would serve to

prevent money laundering violations. We think that the following additional factors also should be incorporated into the statute: the seriousness of the violation, the history of the bank's compliance with the law, relative degrees of recklessness or willfulness evidenced, the involvement of senior bank officials, and the presence of a pattern or practice of money laundering activity.

H.R. 3848 requires that the administrative hearing in charter forfeiture cases be conducted within 30 days of the notice of the proposed forfeiture. We strongly recommend S. 2327, which contains no such time limit. A 30-day timeframe from notice to hearing would make it difficult for both the agency and the financial institution to prepare adequately for an administrative hearing which has potentially grave consequences for the institution and the community it serves.

Alternative Remedies

We believe that we currently possess a number of effective enforcement remedies which can be utilized to address violations of banking law, including money laundering. The effectiveness of these remedies, however, would be significantly enhanced if they were modified to add additional language focusing specifically on money laundering. Both H.R. 3848 and S. 2327 include some of these alternative remedies.

Conservatorship

One alternative we endorse, which appears in H.R. 3848, is to permit the Comptroller, at his discretion, to place a bank into conservatorship when the bank has been convicted of money laundering and the facts justify such a drastic action. While conservatorship would permit the regulatory agency to take control of the offending institution, it would not necessitate the revocation of its charter or unduly disrupt its service to the community in which it operates.

Removal of Bank Officials

Another alternative, which appears in different forms in H.R. 3848 and S. 2327, is a provision for the removal of an individual involved in money laundering. H.R. 3848 addresses only criminal convictions. The House bill amends section 8(e) of the Federal Deposit Insurance Act to provide for the removal of an individual convicted of money laundering offenses or so-called "structuring" offenses under the BSA statutes. S. 2327, on the other hand, addresses administrative violations, criminal indictments, and criminal convictions. The Senate bill amends section 8(e) to provide that the regulatory agencies may remove an individual solely on the basis of administrative violations of money laundering or BSA laws. A criminal conviction need not precede

the removal proceedings. It also provides, under section 8(g) of the FDI Act, for the suspension of individuals indicted for money laundering and BSA felonies and the removal of individuals convicted of these crimes.

We favor the removal provisions of S. 2327 because they provide different administrative remedies, including both suspension and removal, to address administrative violations, criminal indictments, and criminal convictions. S. 2327 also provides for a formal or informal administrative hearing in all removal cases. In contrast, H.R. 3848 addresses only criminal convictions and makes no provision for the suspension of an individual indicted for a crime.

We offer one suggestion on the removal provisions in S. 2327. We recommend that the proposed mandatory issuance of a notice of removal for money laundering convictions under section 8(g) be amended to provide for permissive removal at the discretion of the regulatory agency, as is currently the case for crimes of dishonesty or breach of trust. This change would enable the appropriate agency to determine, on the facts of a particular case, whether a notice of removal should issue.

Amendment to 12 U.S.C. § 1829

Another alternative, not contained in either the Senate or the House bills, would be an amendment to section 19 of the FDI Act, 12 U.S.C. § 1829. Section 19 bars from the banking business persons convicted of a crime involving dishonesty or breach of trust unless they obtain the prior approval of the FDIC. Insured depository institutions are prohibited from permitting such persons to participate in their business. The statute takes effect by operation of law; thus, nothing needs to be done by the agencies when a conviction occurs to bring an individual or an institution within its scope. Knowing violations of the statute by individuals or by depository institutions are punishable by fines up to \$1 million per day or imprisonment up to 5 years.

Consequently, we recommend that section 19 be amended to provide the same prohibitions and penalties for money laundering convictions as are currently applicable to crimes of dishonesty or breach of trust. This amendment would complement the proposed revisions to sections 8(e) and 8(g).

S. 2651 -- Money Laundering Enforcement Act of 1990:

S. 2651 addresses various problems related to money laundering. The OCC supports the objectives and also generally supports the specific proposals in this legislation.

The bill authorizes the Secretary of the Treasury to adopt regulations requiring federal depository institutions (and

certain other financial institutions) to maintain procedures to ensure compliance with money laundering laws. At the present time, federal depository institutions are required by statute and regulation to have a comprehensive program for ensuring compliance with the Bank Secrecy Act. This provision is a reasonable extension of the current authority to address money laundering specifically.

S. 2651 also directs the Secretary of the Treasury to issue final regulations to require recordkeeping of international funds transfers. This provision is the same as the provision in H.R. 3848 with one exception. H.R. 3848 calls for the maintenance of records solely by financial institutions. S. 2651 calls for the maintenance of records not only by financial institutions but also by check cashing and money transmitting businesses and businesses that issue and redeem money orders and travelers checks.

Congressional concern about the potential for moving illicit proceeds by international wire transfers is clearly legitimate, and recordkeeping is an important component of an effective law enforcement system to curb money laundering schemes which utilize wire transfers. We note that Treasury already has initiated the process contemplated by S. 2651 by issuing an Advance Notice of Proposed Rulemaking which solicited comments on seven regulatory options for recordkeeping systems designed to uncover money laundering schemes using wire transfers. We support both these proposals but prefer the broader scope of S. 2651 which would ensure that appropriate recordkeeping requirements are established not only for financial institutions but also for businesses, such as check cashing stores and money transmitters, that can be used for money laundering.

S. 2651 makes several amendments to the Right to Financial Privacy Act (RFPA). We support these amendments which serve the purpose of 1) facilitating the transmission of financial records among agencies for law enforcement and other legitimate purposes; 2) enabling financial institutions to transmit information on possible Bank Secrecy Act violations to Treasury without the burdens imposed by the RFPA; and 3) insulating financial institutions from liability for transmitting certain information about Bank Secrecy Act violations.

These changes in the RFPA will facilitate interagency communication without impairing legitimate privacy interests. The amendments will, for example, enable a bank supervisory agency, without notice to its customers, to communicate more readily with such agencies as Customs, the Department of Labor, the Department of Housing and Urban Development, the Federal National Mortgage Association (FNMA), or the Government National Mortgage Association (GNMA), concerning problems that require the attention of those agencies.

Finally, we do not object to the other requirements in S. 2651. The bill would extend the expiration dates for certain provisions of the Anti-Drug Abuse Act of 1988. It also would prohibit financial institutions from disclosing that they are subject to geographic targeting orders, which allow Treasury to detect "smurfing" by lowering the dollar threshold for reporting purposes. H.R. 3848 contains a similar provision.

H.R. 3848 -- Depository Institution Money Laundering Amendments of 1990

H. 3848 contains certain additional provisions which have no parallel in either of the Senate bills discussed above. We do not object in principle to these provisions which would enhance detection, increase disclosure of information on money laundering, and promote enforcement of the Bank Secrecy Act. These provisions include, for example, the requirement that the Federal Reserve Board report surplus cash flows to the Attorney General and Treasury upon request, that Treasury report to Congress the number of CTR's received, and that Treasury study the feasibility of making notes traceable by electronic scanning.

H.R. 3848 also would allow the Secretary of the Treasury to require that a bank collect prior CTR's from any non-depository financial institution engaged in reportable transactions with the bank. One beneficial effect of this proposal is that businesses already aware of the reporting requirements would have added incentive to comply, and those unaware would be put on notice of their legal obligation to file CTR's.

CONCLUSION

In summary, there are a multiplicity of ways that have been suggested to attack money laundering. The effectiveness of each approach should be weighed carefully. We would be happy to work with the Committee to come up with an effective, workable approach to supplement existing tools.

The OCC is deeply committed to preventing anyone from using financial institutions to launder the proceeds of their illegal activities. The OCC stands ready to work with Congress, our sister regulatory agencies, and the law enforcement community to further the development and implementation of a coordinated and comprehensive response to the threat posed to the integrity of our nation's financial system by these unlawful activities.



Office of Thrift Supervision
Department of the Treasury

Timothy Ryan
Director

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6280

June 13, 1990

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

The Honorable Jake Garn
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Mr. Chairman and Senator Garn:

This is in response to your letter of May 21, 1990, inviting the Office of Thrift Supervision to submit for the record written testimony with respect to three pieces of proposed legislation addressing money laundering enforcement.

Enclosed is a copy of our written testimony. Generally, we support the intent of all three bills, but do have some specific comments on different aspects of each of them. We trust this written testimony will be of use to the Committee.

Sincerely,

Timothy Ryan
Director

Enclosure

Written Testimony of the Office of Thrift Supervision,
U.S. Department of the Treasury
on S. 2327, S. 2651, and H.R. 3848

Provided to the
Committee on Banking, Housing, and Urban Affairs
United States Senate

June 6, 1990

The Office of Thrift Supervision would like to thank the Committee for its invitation to provide remarks for the record with respect to three proposed pieces of legislation addressing money laundering enforcement. The three bills are S. 2327, S. 2651, and H.R. 3848. We are limiting our comments to what we perceive as relatively substantive items.

Before offering our comments on these bills, it is important for the Committee to know that this agency is firmly committed to the enforcement of the Bank Secrecy Act and the anti-money laundering statutes among the savings associations it regulates. The nucleus of our enforcement effort is our specialized compliance examination program whereby specially trained examiners conduct separate, periodic examinations of savings associations for compliance with the Bank Secrecy Act and a number of other traditional consumer protection statutes. In addition to this specialized program, we have endeavored to educate the industry with regard to Bank Secrecy Act matters through the dissemination of an educational brochure on the Act, our Compliance Activities Handbook and a "self-assessment" guide for institution management, and by providing speakers on the Bank Secrecy Act to trade group seminars.

For your information, we are also attaching a copy of our testimony before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance, and Urban Affairs on March 8, 1990. That testimony focused on three different House bills that contained provisions and issues similar to those included and raised in the bills discussed herein.

S. 2327 and H.R. 3848 -
Revocation of Charter and Termination of Insurance Provisions

S. 2327 and H.R. 3848 both contain provisions that would enable the appropriate federal agency to revoke a financial institution's charter or terminate its insurance if it was convicted of certain money laundering or monetary transaction reporting offenses. While the general intent between the two bills is similar, the requirements are different in several respects.

First, S. 2327 treats money laundering and monetary transaction reporting offenses differently. The appropriate federal agency would be required to hold a hearing if a depository institution is actually convicted of money laundering in violation of 18 U.S.C. 1956 or 1957. Conversely, the regulatory agency may, in its discretion, hold a hearing on whether to revoke the charter of any federally chartered depository institution which is convicted of a monetary transaction reporting offense in violation of 31 U.S.C. 5322. On the other hand, H.R. 3848 would always require the agency to hold a hearing if the federally chartered depository institution and any of its directors, trustees, or senior executive officers have been convicted of violating 18 U.S.C. 1956, 1957, or 31 U.S.C. 5322.

We generally support the concept of holding hearings for the purpose of considering the revocation of a charter. However, we do not necessarily agree that there needs to be a difference in treatment depending upon whether the violations either involved a money laundering or a reporting offense. Because of the unique circumstances that may arise in any of these potential revocations, we would certainly favor having the discretion to determine whether a hearing should be held in instances involving violations of these statutes as opposed to having legislation mandate when a hearing must be held.

Second, neither bill addresses the issue of the type of charter revocation hearing required. There may be instances where an actual hearing on the record would not be necessary. The agencies should have the flexibility to consider evidence mitigating the need for charter revocation submitted in writing rather than by requiring the admission of such evidence before an administrative law judge. The agencies currently employ such a written hearing process for the issuance of capital directives. In any event, the proposals should clarify the availability of such an alternative and address expressly any due process concerns, including the standard of review, such an alternative may cause.

Third, we see a significant difference in one of the factors to be considered by the appropriate agency when deciding to revoke a charter. S. 2327 specifically includes language that would require the agency to consider whether the interests of the local community in adequate depository and credit services would be threatened by the revocation of the charter; H.R. 3848 does not contain a similar provision. We endorse the factor found in S. 2327 as it would provide us with the statutory basis for considering such impact on the local community.

Fourth, neither S. 2327 nor H.R. 3848 would require the Federal Deposit Insurance Corporation to notify the Office of Thrift Supervision when it has terminated the deposit insurance of a state-chartered savings association. The OTS is the primary supervisor with respect to such institutions and the proposed

legislation should be amended to reflect proper notification to an institution's primary regulator in such instances. This is also a problem for some State thrift regulators.

S. 2651

This bill would (1) require the Department of the Treasury to issue regulations concerning the identification of non-bank financial institutions subject to the Bank Secrecy Act; (2) prohibit illegal money transmitting businesses; and, (3) strengthen recordkeeping requirements for international wire transfers.

Section 5 of S. 2651 would amend 31 U.S.C. 5326 so that a financial institution, its directors, officers, agents, or employees subject to an order under section 5326 could not disclose the existence of or terms of the order to any person except as prescribed by the Secretary of the Treasury. This language appears intended to enhance the power of the Secretary to combat money laundering, but it might serve to prohibit discussions and an exchange of information about such orders between savings associations and the OTS. We believe that this section should be amended to specifically exempt supervisory discussions about such orders between insured depository institutions and their primary federal regulators. Section 11 of H.R. 3848 contains a substantially similar amendment to 31 U.S.C. 5326 and the comment contained herein extends to that provision as well.

Section 8 of S. 2651 would amend the Right to Financial Privacy Act to allow the transfer of financial records between agencies under certain limitations. This provision would also enable a supervisory agency, or its director or employees to transfer financial records to the Secretary of the Treasury if there was reason to believe that such records were relevant to possible violations of a provision of subchapter II of chapter 53 of Title 31 of the United States Code. We strongly support this provision of S. 2651 as it could serve to remove an obstruction which sometimes occurs when a financial regulatory agency seeks to exchange information with a non-financial regulatory agency (e.g., Federal Trade Commission).

H.R. 3848

The comments below refer to those remaining sections of H.R. 3848 which have not been previously addressed in this statement.

Section 8 of H.R. 3848 gives the Secretary of the Treasury the authority to promulgate regulations or issue orders requiring FDIC-insured depository institutions to collect from customers, who are other financial institutions subject to the Currency Transaction Reporting Act, prior financial transactions between such customers and third parties. The depository institution

would be obligated to notify the Secretary of the Treasury in writing if the financial institution failed to provide the requisite reports. We support the intent of this provision inasmuch as it is impracticable for federal law enforcement authorities to regularly examine and oversee the activities of these businesses. However, we think some consideration should be given to shielding depository institutions from criminal or civil liability that could result from the filing of false or misleading reports from the financial institutions.

We strongly support Section 9 of H.R. 3848 to encourage states to regulate and license businesses such as check cashers or money transmitters.

Lastly, Section 5 would amend section 918(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) by requiring all federal regulators of depository institutions to submit an annual report to the Congress identifying all depository institutions which were either convicted of, or were subject to enforcement actions for violations of 18 U.S.C. 1956, 1957, or 31 U.S.C. 5322. This provision is unclear. If read narrowly, it would appear merely to duplicate the current requirements of FIRREA that OTS provide Congress with reports of the number of enforcement actions taken, including those for money laundering, and that it publish all final orders. If read broadly, it would require the agency to notify Congress of the initiation of specific enforcement actions. This reading is contrary to the private nature of these actions as provided in Section 8 of the Federal Deposit Insurance Act. We suggest that this section be deleted.

Statement by

Jerauld C. Kluckman,
Director, Compliance Programs, Office of Thrift Supervision
U.S. Department of the Treasury

Before the

Subcommittee on Financial Institutions Supervision,
Regulation and Insurance

of the

House Committee on Banking, Finance, and Urban Affairs

March 8, 1990

Mr. Chairman and members of the Subcommittee, I appreciate your invitation to testify this morning on possible legislative initiatives designed to strengthen our nation's battle against money laundering. You have asked for our views with respect to four different pieces of legislation, H.R. 3848, H.R. 3939, H.R. 4064, and H.R. 4044.

Before offering our comments on these bills, I believe that it is important for the Subcommittee to know that this agency is firmly committed to the enforcement of the Bank Secrecy Act and the anti-money laundering statutes among savings associations. In the past two years, we believe that we have significantly improved our examination and supervisory processes in this area by the adoption of a specialized compliance examination program, development of educational materials, and, more recently, increased involvement with the Office of Financial Enforcement of the U.S. Treasury.

Under our specialized compliance examination program, our Bank Secrecy Act examination responsibilities are to be carried out by a separate phalanx of examiners who have received in-depth training in the compliance laws and regulations. Our educational initiatives involve the development of written material in the form of handbooks and brochures for the savings associations we supervise. The first brochure we developed was devoted to the Bank Secrecy Act. In addition to our participation with the U.S. Treasury's Bank Secrecy Act Working Group, and its efforts to further the objectives of the National Drug Control Strategy, in 1988 we detailed one of our experienced examiners to the Treasury's Office of Financial Enforcement to assist their Bank Secrecy Act efforts. Attached is a letter that we recently sent to you, Mr. Chairman, that details our enforcement program and our other initiatives.

H.R. 3848

Generally, this bill would require the appropriate federal regulatory agency to revoke the charter of any federal depository institution which has been convicted of any money laundering or currency transaction reporting offenses under 18 U.S.C. 1956, 1957, or 31 U.S.C. 5322. The Federal Deposit Insurance Corporation would be required to terminate the insured status of any State-chartered depository institution convicted of the same crimes, notify the appropriate State banking supervisor of the termination, and publish notice of the termination of the insured status of the institution.

Briefly, 18 U.S.C 1956 and 1957 are criminal statutes. Section 1956 prohibits both financial institutions and individuals from intentionally or knowingly engaging in financial transactions with the proceeds of criminal activities. It also sets forth criminal and civil penalties for financial institutions and individuals who are convicted of these offenses. Under Section 1957, it is illegal for financial institutions to knowingly engage in, or attempt to engage in monetary transactions involving criminally derived property that is greater in value than \$10,000. Violators who are convicted under this statute are subject to fines and imprisonment. Section 5322 of Title 31 of the U.S. Code establishes criminal penalties for willful violations of the Currency and Foreign Transactions Reporting Act.

While we applaud the intent of this bill to further control money laundering, we believe it represents an extreme step in the enforcement of the money laundering laws. The revocation of a

charter, and the termination of federal deposit insurance are measures that have far-reaching social and business implications, and may carry some unintended, negative consequences. We believe that these measures might be too extreme and, to some extent, misdirected. We would prefer to see a further strengthening of the existing statutory penalties in the form of stiffer jail sentences and fines for money laundering offenses for the individuals convicted of such crimes than the adoption of these new tools. We have five major concerns with the bill.

First, the proposed legislation does not appear to give the agencies any flexibility to use their discretion as to the revocation of a charter or the termination of federal deposit insurance. There may be many instances where such extreme steps may not match the crime and should not be imposed. Rarely is it found that money laundering activities at a financial institution have been approved by the directors or management or are an intended business objective of the institution. Instead, such activities usually result from the practices of one or a few employees of an institution, despite the establishment of reasonable controls by the institution to deter such practices. If the Congress intends to proceed with a bill along the lines of H.R. 3848, we would recommend that its provisions be amended to enable the regulators to invoke reasonable discretion along fairly broad parameters.

Second, we now have an enforcement arsenal at our disposal that was significantly augmented by the enactment of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 (FIRREA). This law broadly expanded our ability to impose civil money penalties for violations of laws in amounts up to \$1 million per day. This, in and of itself, should provide the deterrent necessary to assure that institutions conduct themselves properly. We did not have the authority to invoke civil money penalties for violations of such laws, and thus could not impose a penalty for Bank Secrecy Act violations prior to the enactment of FIRREA. In addition, we can now remove employees of an institution who have violated the Bank Secrecy Act. Prior to FIRREA, employees were not among those whom we could remove in cases involving personal dishonesty or gain or other benefit to the individual. We are confident that we could use this authority in connection with most money laundering offenses. This removal authority supplements that which we have had for officers and directors of savings associations. We also have the ability to issue cease and desist orders to address any kind of law or regulation. As mentioned earlier, we have improved our examination and supervisory processes in the Bank Secrecy Act area and are actively referring violations to the U.S. Treasury for possible imposition of civil penalties and criminal investigation.

Third, the proposed legislation should consider the fact that financial institutions are structured differently and serve different kinds of markets and communities. The revocation of the charter or the termination of federal deposit insurance of the only institution serving a given community, for example, could have an adverse impact not only on the depositors of that community (who might be compelled to find an alternative, less convenient depository for their funds), but on local businesses, homeowners, and farms that relied on that institution as a primary loan source. Moreover, inasmuch as the bill contains no mechanism for the closing of a federal savings association, there is potentially no notice to depositors who would find their institution closed and their funds uninsured without having had the chance to withdraw them. Clearly, innocent depositors and customers could be seriously impaired in an economic sense by the revocation or termination.

Fourth, the forfeiture of a charter or the termination of deposit insurance has economic consequences for individual taxpayers and the government. The possible ensuing liquidation process could prove costly and cumbersome.

Finally, although we have not had the opportunity to explore all the possible ramifications of the proposed legislation, it does raise a number of more technical, legal issues involving due process, and conflicts between it and other existing statutes. We would be pleased to share these concerns with your staff.

H.R. 3939

This bill would attempt to fill a gap in the enforcement of federal anti-money laundering statutes by inculcating States to establish uniform laws to regulate check cashing services, money order issuers, and other nonbank money transmitters to prevent money laundering. We fully support this initiative and believe that its adoption would improve the existing statutory scheme. It only makes sense that as the regulators improve their money laundering detection techniques and financial institutions improve their compliance procedures, that criminals would turn to other, less regulated financial service providers to wash their illegal profits.

H.R. 4064

This bill would legislate recordkeeping requirements on international wire transfers between domestic and foreign financial institutions or financial agents. The records would be gathered and maintained by the domestic financial institution or financial agent. Most of the material that the bill would have recorded relates to the source of the transfer and identifying characteristics of the originator.

As the Subcommittee may know, the Office of Financial Enforcement of the U.S. Treasury recently published in the Federal Register (54 FR 45769) an Advance Notice of Proposed Rulemaking on this subject. We understand that the Treasury is analyzing the comments received on the advance notice and will be publishing a proposal in the near future. We further understand that the Treasury has the authority to promulgate such rules relating to international wire transfers. Consequently, legislation may be somewhat premature and unnecessary at this time. We would like to see the continuation of the regulatory process on this complex and involved issue.

We should mention, however, that we do not believe that the savings associations that we supervise are nearly as actively involved in international wire transfers as are commercial banks. In connection with the Treasury's forthcoming proposal on international wire transfers, we will be refining our knowledge of the activities of savings associations in this area and exploring the actual availability of any required information for recordkeeping or reporting purposes.

We also believe that the success of either a legislative effort such as this bill, or a regulatory initiative as sponsored by the Treasury, is dependent upon the cooperation of foreign governments, businesses, and financial institutions.

H.R. 4044

Section 2

The intent of Section 2 of this bill is similar to that of H.R. 3939. It seeks to strengthen the enforcement scheme that exists for certain unregulated entities which are subject to the federal currency transaction reporting laws and regulations in much the same way as H.R. 3939. We support the intent of this section of H.R. 4044 as well as that of H.R. 3939.

Section 2 of H.R. 4044 is different, however, from H.R. 3939. It authorizes the Secretary of the Treasury to request, by regulation or order a "depository institution" (bank, savings association, etc.) to ask a "financial institution" (currency exchanger, check casher, etc.) for a copy of any currency transaction reports that the financial institution may have filed which may relate to a "reportable transaction" between the depository institution and the financial institution. If the depository institution is not able to obtain the requisite reports, it must provide written notice to the Secretary of the Treasury that the financial institution failed to provide any copies of such reports.

As pointed out in the bill, it is indeed impracticable for federal law enforcement agencies to regularly examine and oversee the operations of these businesses. This provision may serve to strengthen compliance among financial institution reporters and we support its intent.

Section 3

Section 3 of this bill contains recordkeeping requirements for wire and electronic fund transfers in much the same vein as Representative Torres' bill H.R. 4064. More specifically, it would amend 12 U.S.C. 1829b(d) (the Federal Deposit Insurance Act) to authorize the Secretary of the Treasury to promulgate regulations to require depository institutions to maintain certain records with respect to wire or electronic transfers of funds. These provisions, however, appear to be much more sweeping than those in H.R. 4064 in that they relate to all wire or electronic transfers of funds, not just international wire transfers. To the extent that this section provides the Secretary of the Treasury with any additional authorization to strengthen its enforcement ability, we are certainly supportive of it.

Section 4

Section 4 adds language to 31 U.S.C. 5326(a) that would prohibit the subject of a targeting order from disclosing the terms or provisions of the order to any person. Although we fully expect that the Treasury will keep us informed of any targeting orders impacting upon the savings associations we regulate, we believe that our supervised institutions should be permitted to discuss the order with our examination and supervisory staff. As the first-level enforcers with respect to the federal anti-money laundering laws, we believe that we have an obligation to assure that our institutions are in compliance and are following, where appropriate, the provisions of a targeting order. Consequently, we have a legitimate need to confidentially discuss such matters with our institutions and would recommend that an exception to this section be incorporated to allow for such discussion.

We have no comments on the remaining sections of this bill.

Mr. Chairman, we share your view that the war on drugs will be facilitated if together we can end money laundering in our financial institutions and other providers of financial services. We are playing an aggressive part in this battle and assure you that we will continue to expend the resources necessary in terms of dollars and manpower to carry out our responsibilities regarding savings associations.



NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS
P.O. Box 3769 WASHINGTON, DC 20007
(703) 522-4770

May 17, 1990

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to you on behalf of the National Association of Federal Credit Unions (NAFCU) regarding the Committee's planned May 18th hearings on S. 2327, the "Depository Institution Money Laundering Amendments of 1990." NAFCU fully supports you and the Banking Committee's efforts in holding hearings and moving legislation which addresses the crime of money laundering at our nation's insured institutions.

I would like to take this opportunity to point out that, as introduced, S. 2327 does contain both drafting and substantive statutory errors as it relates to credit unions: On behalf of our member credit unions, NAFCU requests that as you and your distinguished colleagues on the Committee take up this particular piece of legislation, these errors be noted and corrected.

The drafting errors occur in sections 2 and 3 of S. 2327. First, the bill proposes to add a new "Section 128" to the end of Title I of the Federal Credit Union Act (12 U.S.C. 1752 et. seq.). However, sections 128 and 129 currently exist (U.S.C. 1773 and 1774) in Title I, so any new section added to the end of this Title would need to be numbered "Section 130." Second, the legislation proposes to add subsection "c" to the end of Section 206 of the Federal Credit Union Act (12 U.S.C. 1786). However, there already exists subsections "a" through "s," so any new subsection added to the end of Section 206 should be designated subsection "t."

Putting drafting errors aside, the substantive statutory errors, also found in sections 2 and 3, are of particular concern. Credit unions are unique non-profit financial institutions importantly distinct from commercial banks and savings and loans. Two of the most important features that set credit unions apart are: they are exclusively member-owned (there is no corporate stock and thus no possibility of proportional equity positions in

The Honorable Donald W. Riegle, Jr.
May 17, 1990
Page 2

credit unions)] and, they are the only type of financial institution wholly owned by Americans (there are no U.S. branches of foreign owned credit unions in this country). Both sections 2 and 3 include definitions of "senior management officials" which simply cannot apply to credit unions. Specifically, Section 2 of proposed Section 128(d) includes (for purposes of defining "senior management official") the following:

"...individuals who exercise major supervisory control within a credit union, including members of the board of directors [and individuals who own or control 10 percent or more of the outstanding stock of such credit union. If the credit union is a United States branch of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States."] (Brackets added.)

The language found in the brackets simply cannot apply by statute to credit unions as chartered by the United States government. Again, in Section 3 proposed subsection c(7) of Section 206, the exact same statutory language is found for the purposes of defining the term "senior management official."

Mr. Chairman, we have often found that when banking legislation applicable to banks, thrifts and credit unions is being drafted, mirror statutory language is put in place for all three types of financial institutions. However, as in the case of S. 2327, statutory language similarly applicable to banks and thrifts does not conform to the unique characteristics of credit unions. The National Association of Federal Credit Unions has indeed been fortunate to work with you and the Committee to ensure that legislation reflects and accounts for those characteristics unique to credit unions. Along these lines, I would like to offer the full resources of our government affairs department to you and the Committee in an effort to correct present errors in S. 2327.

If we may be of assistance to you or your staff, please do not hesitate to call Bill Donovan, our vice president for government affairs at 522-4770. We look forward to working with you and your staff on S. 2327 and other legislation affecting credit unions that may emerge in the future.

Sincerely,

Kenneth L. Robinson

Kenneth L. Robinson
President

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM
BORIS MELNIKOFF

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036



June 4, 1990

Ms. Lory Breneman
Chief Clerk
Committee on Banking,
Housing, and Urban Affairs
United States Senate
Washington, DC 20510-6075

Dear Ms. Breneman:

In response to the request from Chairman Riegle, the following are the American Bankers Association's responses to the questions submitted by Senator Alfonse D'Amato for the May 18, 1990 hearing on money laundering legislation.

Q. 1 What is your impression of the importance of "Know Your Customer" rules for banks?

A. 1 The American Bankers Association has always advocated strong "Know Your Customer" policies. Our recent survey on the Bank Secrecy Act found that eighty-six (86) percent of our respondents have formal "Know Your Customer" policies. This statistic makes it clear that a Treasury Department regulation on knowing our customers will generally be easy to implement.

ABA also disputes Treasury's statement that financial institution policies on knowing their customers are not uniformly high. There is no evidence to confirm this statement and, in point of fact, financial institution account-opening procedures, a main component of knowing the customer, are detailed and strong.

Finally, ABA's Money Laundering Task Force will soon issue "Know Your Customer" guidelines by the end of July. We would be pleased to submit those guidelines to this Committee.

Q. 2 I would like to ask you for a reaction to each of the provisions of the Money Laundering Enforcement Act. How helpful could each of the following be?

(a) -- requiring banks to identify their non-bank financial institution customers?

A. (a) ABA supports the concept of placing non-bank

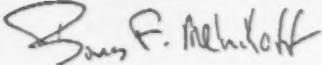
financial institutions in the same regulatory environment as the commercial banking industry. Therefore, we favor some method of getting the Treasury Department the needed information to identify those entities. However, we support the identification requirements as long as financial institutions can rely on the information given to them by the customer and be protected from civil and criminal liability for that good-faith reliance.

- (b) -- the federal prohibition of illegal money transmitting business violating state law?
 - A. (b) ABA supports Sec. 3 of S. 2651 that prohibits illegal money transmitting businesses.
 - (c) -- authorizing Treasury to issue procedures for banks and other financial institutions to guard against money laundering?
 - A. (c) ABA believes that the Treasury already has the authority to issue procedures to guard against money laundering, but if Sec. 4 is intended to allow the issuance of Know Your Customer regulations, ABA supports this change.
 - (d) -- recordkeeping regulations for international fund transfers?
 - A. (d) ABA is adamantly opposed to any legislation that would require certain types of recordkeeping for international fund transfers. Therefore, ABA supported the final version of H.R. 3848 which gives the Treasury until January 1, 1991 to complete their regulatory process on wire transfers.
- Since the volume of wire transfers are so dramatic and the transactions so complex, any changes in current law should occur only through the regulatory process.
- Thus, Sec. 6 which parallels H.R. 3848 is the proper way to address the difficult issue of money laundering by wire transfers.
- (e) -- prohibiting disclosure to customers when Treasury institutes special geographic targeting rules?
 - A. (e) ABA is not opposed to non-disclosure of targeting orders. ABA has been instructing its members not to disclose targeting orders since the enactment of this authority in the 1988 Drug Bill.
 - (f) -- the bill's proposed amendments to the Right to Financial Privacy Act?
The amendments to the Right to Financial Privacy Act (RFPA) that would allow a financial institution to

provide actual records on customers who may have violated the Bank Secrecy Act appears to be a departure from the current requirements that no records are to be submitted from an institution until that financial institution receives a court order, subpoena, administrative summons, or other government order. Therefore, this proposed change is not technical and should be analyzed by this Committee to determine the appropriateness of this change.

If the Committee needs any additional information, please contact John Byrne at the ABA at (202) 662-5029.

Sincerely,



Boris F. Melnikoff
Chairman

ABA Money Laundering Task Force